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Du, Zejun

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LAW AND POLICY: ILLEGAL ECONOMIC IMMIGRATION IN CHINA

ZEJUN DU

Submitted in total fulfilment of the requirements of the degree
of Doctor of Philosophy

February 2021

Faculty of Law

Supervisors: Associate Professor Umair Ghorri and Professor Vai Io Lo

This research was supported by Bond University Postgraduate Research Scholarship.

|

DECLARATION BY AUTHOR

This thesis is submitted to Bond University in fulfilment of the requirements of the degree of Doctor of Philosophy.

This thesis represents my own original work towards this research degree and contains no material that has previously been submitted for a degree or diploma at this university or any other institution, except where due acknowledgement is made.

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ETHICS DECLARATION

The research associated with this thesis received ethics approval from the Bond University Human Research Ethics Committee. Ethics application number ZD00020.

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ABBREVIATIONS LIST

ASEAN	Association of Southeast Asian Nations
BBC	British Broadcasting Corporation
CIS	Commonwealth of Independent States
EU	European Union
FMS	Federal Migration Service
GDP	gross domestic product
HRC	Human Rights Council
ILO	International Labour Organization
IOM	International Organization for Migration
MFA	Ministry of Foreign Affairs (China)
MPS	Ministry of Public Security (China)
OECD	Organisation for European Co-operation and Development
PRC	People's Republic of China
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
US	United States

|

OTHER RESEARCH

Parts of this research and some other researches have been presented at seminars or conferences:

- Zejun Du, ‘Legal Issues of Doctor–Patient Disputes in China’ Asian Law and Society Association Conference, Osaka University (13–15 December 2019).
- Zejun Du, ‘Government Information Disclosure in China: Development and Further Improvement’ Asian Law and Society Association Conference, Bond University (30 November and 1 December 2018).
- Zejun Du, ‘Illegal Economic Immigration in China’ Law HDR and Honours Student Showcase, Bond University (17 October 2018).
- Zejun Du, ‘Illegal Immigration for Family Reasons in China’ the 7th Annual International Conference: Law, Regulations and Public Policy, Singapore (25–26 June 2018).
- Zejun Du, ‘Overview of Illegal Immigration in China’ Asian Law and Society Association Conference, Taiwan (15–16 December 2017).

|

ABSTRACT

Since the reform and opening-up of the Chinese economy in 1978, which resulted in the rapid development of China's economy and its continuous expansion to the outside world, the number of illegal economic immigrants has increased day by day, causing a series of problems for China's economic development and social stability. In terms of the economy, illegal economic immigration has harmed the labour market and accelerated the consumption of resources. In terms of society, some illegal economic immigrants commit crimes, which undermines social stability. If illegal economic immigration is not managed properly, it will even damage international relations. To cope with this issue, the regulatory framework requires strengthening.

Problems have been found in the governance of illegal economic immigration in China. In terms of government policy, the current policy of introducing immigrants is incompatible with the labour market. In terms of legislation, relevant laws are not systematic, laws and regulations are lagging, there is a gap in the current regulation, and penalties are too light. In terms of the management of departments, the degree of specialisation is not enough. In terms of enforcement, an organisational model is essential.

The problems caused by illegal economic immigration are attracting the attention of the Chinese government. On 13 March 2018, at the First Session of the Thirteenth National People's Congress, the decision was made to reform and establish the National Immigration Administration. The main responsibilities of this body include taking the lead to coordinate the management of 'three-non' foreigners—illegal entry, illegal residence, and illegal employment of foreigners—and the repatriation of illegal immigrants.

Judging from the situation in developed countries, not paying attention to the issue of illegal immigration may trigger a serious social crisis. At present, the problem is not serious, but China should act proactively to prevent it from becoming so. It must improve its regulatory framework. The first step is to speed up the legislative process and promote the promulgation of Chinese immigration law. The second is to build an organisational model. Lastly, it must strengthen international cooperation.

|

CHAPTER ONE: INTRODUCTION

I BACKGROUND

A Illegal Immigration Against a Background of Economic Globalisation

Globalisation is an irreversible historical trend in the current era, and economic globalisation is the most important part of it.¹ With the rapid advancement of economic globalisation, economic factors such as capital, commodities, and technology have further accelerated cross-border flows.² As the most important economic factor, the transnational movement of people is also inevitable.

Countries around the world are either a country of origin or a country of destination or a transit country, and some countries are a combination of all three.³ International migration includes legal migration and illegal migration.⁴ Countries around the world encourage legal migration⁵ and must deal with the thorny issue of illegal migration.

According to the International Organization for Migration (IOM), the current global estimate (as at 2019) of international migrants is around 272 million, which equates to 3.5 per cent of the global population.⁶ The year 2017 is the most recent year to record data on illegal migrants. In that year, an estimated 58 million illegal migrants were recorded, accounting for about 22 per cent of total international migrants in the same year.⁷

¹ Sadykova Raikhan, et al, 'The Interaction of Globalization and Culture in the Modern World' (2014) 122 *Procedia-Social and Behavioral Sciences* 8–12.

² Parisa Samimi and Hashem Salarzadeh Jenatabadi, 'Globalization and Economic Growth: Empirical Evidence on the Role of Complementarities' (2014) 9(4) *PLoS One* 1–7.

³ IOM, *International Migration and Development* (IOM, 2008) 67, 79.

⁴ Khalid Koser, *International Migration: A Very Short Introduction* (Oxford University Press, 2007) 54.

⁵ A large number of countries accept legal immigration, such as Australia, Canada, the United States, New Zealand, Singapore, and China, and one of the reasons is that they need a labour force. See Ather H Akbari and Martha Macdonald, 'Immigration Policy in Australia, Canada, New Zealand, and the United States: An Overview of Recent Trends' (2014) 48(3) *International Migration Review* 801–822; Mui Teng Yap, Gillian Koh and Debbie Soon, *Migration and Integration in Singapore: Policies and Practice* (Routledge, 2015) 160; 喻术红 [Yu Shuhong], 《构建“人类命运共同体”理念下在华外籍劳工权益之保护》 [Protecting the Rights of Foreign Workers in China under the Concept of 'Community of Human Destiny'] (2020) 1 社会科学战线 *Social Science Front* 197–206.

⁶ IOM, *World Migration Report 2020* (IOM, 2019) 19.

⁷ IOM, *Global Migration Indicators* (IOM, 2018) 30; UN, *International Migration Report 2017: Highlights* (UN, 2017) 3.

B *Illegal Immigration in China*

The concept of ‘three-non’ foreigners originated around 1990. ‘Three-non’ refers to illegal entry, illegal residence, and illegal employment of foreigners. These are the illegal immigrants referred to in this thesis.⁸ According to the statistics from 1995 to the end of 2000, Chinese police dealt with more than 85,000 foreigners that fell into these categories and 36,000 of these foreigners were deported while more than 50,000 remained on the mainland.⁹ From 2000 to October 2002, China’s entry-and-exit frontier inspection authorities ferreted out 1,669 smuggling cases of foreigners at the port.¹⁰ From 1 April to 1 July 2002 especially, Chinese police carried out a three-month nationwide joint action against illegal immigration and ferreted out 1,920 illegal immigrants.¹¹ In 2006, the Chinese public security organs dealt with and repatriated 16,000 illegal immigrants.¹² In 2011, the Chinese public security organs dealt with more than 20,000 illegal immigrants.¹³ It can be seen from the data, therefore, that the number of illegal immigrants investigated and dealt with by the public security organs is increasing year by year. Moreover, innumerable illegal immigrants have remained undetected or have re-entered illegally after repatriation.¹⁴

To cope with this situation, on 30 June 2012 China approved the *Entry-and-Exit Administration Law of the People’s Republic of China*.¹⁵ Unfortunately, the new law has not stopped illegal immigrants. For example, according to the BBC, there were about 30,000 foreign workers in Dongguan City, Guangdong Province in 2015 and 5,000 cases of illegal foreign workers were

⁸ More details are discussed in Chapter Three.

⁹ 浙江警察学院 Zhejiang Police Academy, 《在华外国人违法犯罪行为分析与防范》 [*Analysis and Prevention of Illegal and Criminal Behaviours of Foreigners in China*] (April 2018) 4.

¹⁰ 《识别伪假证件国际研讨会在深圳召开》 [*International Symposium on Identifying Fake Documents Held in Shenzhen*] 网易 [NetEase] (Web Page, 26 November 2002) <http://edu.163.com/editor_2002/editor_training/021126/021126_88386.html>.

¹¹ Ibid.

¹² 林孙俊 [Lin Sunjun], 《当代中国入境非法移民主要类型及治理研究》 [‘Study on the Main Types and Governance of Illegal Immigration in Contemporary China’] (PhD Thesis, 中共中央党校 [Central Committee Party School], 2019) 4.

¹³ Ibid 4.

¹⁴ Ibid 4.

¹⁵ 《中华人民共和国出境入境管理法》 [*Entry-and-Exit Administration Law of the People’s Republic of China*] (PRC) Standing Committee of the National People’s Congress, 30 June 2012.

found.¹⁶ Moreover, more than 3,000 foreigners who entered Guangdong Province illegally were found from January to March 2016.¹⁷

The reasons for illegal immigration can be divided into political, economic, and family reasons. This thesis studies illegal immigration for economic reasons, which also occupies the dominant position of illegal immigration in China.¹⁸ That is to say, with the further improvement of China's economic development, the number of illegal immigrants will probably continue to rise.

II IMPACTS OF ILLEGAL ECONOMIC IMMIGRATION

For destination countries of illegal economic immigration, the impacts constitute a double-edged sword. On the one hand, they bring real benefits to China in terms of making up for labour shortages and helping people find marriage partners. On the other hand, they bring real harms in the political, economic, and social fields—and the harms outweigh the benefits.

A Negative Impact on the Economy

As a transnational population movement, illegal economic immigration increases the labour force in the destination country. From the perspective of economics (and if the production factors of all countries can flow freely), as the source country exports population to the destination country, the production efficiency of the destination country will improve and total output will increase.¹⁹ Therefore, in theory, the entry of illegal economic immigrants should benefit the destination country. How it works is this: a considerable number of illegal immigrants conduct immigration activities for economic purposes—that is, to find a better life. These illegal immigrants often move from underdeveloped countries to more developed countries. In these underdeveloped countries, there is a problem of overpopulation, while in the more developed countries, there is a shortage in the low-skilled labour force. This kind of illegal immigration based on market selection fills the low-skilled labour needs of relatively

¹⁶ 《中国工厂雇大量越南非法劳工》 [‘Chinese Factories Employ a Lot of Illegal Vietnamese Workers’] 参考消息网 [Reference News] (Web Page, 8 August 2015) <<http://news.163.com/15/0808/00/B0F3H1AN00014AEE.html>>.

¹⁷ 《广东首季截获 3,000 外籍偷渡者》 [‘Three Thousand Illegal Immigrants Were Found in Guangdong’] 观察者网 [Observer Network] (Web Page, 25 April 2016) <https://www.guancha.cn/FaZhi/2016_04_25_358064.shtml>.

¹⁸ 林孙俊 [Lin Sunjun] (n12) 6.

¹⁹ G D A Macdougall, ‘The Benefits and Costs of Private Investment from Abroad: A Theoretical Approach’ (1960) 36 *Economic Record* 13–35.

developed countries and makes up for the shortages in its labour force. At the same time, it stimulates local market demand and increases local government revenues.²⁰ According to the research on European countries in the 1990s, for each percentage point increase in the population of a country through immigration, its GDP increases by 1.25 to 1.5 percentage points.²¹

However, the ideal free market economy can only be a hypothesis. In the real world where countries compete, the completely free flow of production factors is just an illusion. In this case, illegal economic immigrants who disrupt the order of international population movement will bring serious harm to the economy of the destination country. The first is the impact on the labour market in the destination country. Since the supply of other production factors in a country is relatively constant or increasing only slightly, once a considerable number of illegal economic immigrants enter, the labour supply will exceed other production factors, thereby causing an economic imbalance. This will directly lead to unemployment and a decline in income for domestic people. For example, in the 1990s, due to the collapse of the former Soviet Union, many Jews from the former Soviet Union immigrated to Israel, which caused the Israeli labour force to increase by more than 10 per cent over a short period, in turn causing a significant increase in unemployment.²² In another example, in the 1970s a large number of Bangladeshi immigrants entered India, especially Assam, for various reasons. The Indian scholar Namrata Goswami estimates that there were more than six million illegal economic immigrants from Bangladesh in Assam.²³ By being willing to work for extremely low wages, these illegal immigrants seized many low-paid local jobs, eventually triggering bloody conflicts that lasted for decades.²⁴ As China is the most populous country in the world, every year there is considerable employment pressure. If illegal economic immigrants enter China unchecked, this will have a profound impact on the employment market. For example, due to the increase in local labourers' wages, China's south-eastern coastal exporters employ large

²⁰ Ilkay Yilmaz, 'Immigration and Economic Integration' (PhD Thesis, Michigan State University, 2004).

²¹ 林孙俊 [Lin Sunjun] (n12) 34.

²² 艾仁贵 [Ai Rengui], 《以色列的高技术移民政策:演进、内容与效应》 ['Israel's High-Tech Immigration Policy: Evolution, Content, and Effects'] (2017) 3 西亚非洲 *West Asia and Africa* 50–74.

²³ Namrata Goswami, 'Bangladesh Illegal Migration into Assam: Issues and Concerns from the Field' (January 2010) *Report of the Institute for Defence Studies and Analysis (India)* 3.

²⁴ Subhakanta Behera, 'Trans-border Identities' (May 2011) *Report of Indian Council for Research on International Economic Relations* 13.

numbers of cheap illegal economic immigrants from Myanmar and Vietnam,²⁵ which has led to the unemployment of local labourers.²⁶

Second, illegal economic immigration disrupts the normal economic order of the destination country. Because illegal economic immigrants do not have permission to engage legally in business activities or employment, they often have to make a living by working illegally or engaging in underground trade, which disrupts normal market order, reduces state taxes, and undermines fair competition.²⁷ At the same time, the need to elude police means there will be a demand for fake identity documents and underground leases, resulting in corresponding illegal economic industries.²⁸

Third, it increases the financial burden on the destination country. On the one hand, illegal economic immigration is a violation of the normal population flow in the destination country, forcing the destination country to expend a lot of resources on investigating, managing, and repatriating illegal economic immigrants.²⁹ On the other hand, due to humanitarianism, countries must provide basic economic, medical, and educational assistance to illegal economic immigrants in distress.

B Negative Impact on Social Stability

First, illegal economic immigration violates the order of border management. Borderlines are the legal basis for determining the territorial scope of a state, and their meaning to a sovereign state is self-evident. However, due to the special geographical circumstances of China—that is, there are numerous borders between China and its neighbouring countries—some people from neighbouring countries ignore national borders and conduct illegal immigration. The case of

²⁵ 陶梦萦 [Tao Mengying], 《中国工厂大量雇佣廉价非法移民》 [‘Chinese Factories Employ Large Numbers of Illegal Economic Immigrants’] 腾讯财经网 [Tencent Finance] (Web Page, 10 August 2013) <<http://finance.qq.com/a/20130810/005791.htm>>.

²⁶ It needs to be noted that not all illegal immigrants are unskilled workers. In fact, some illegal economic immigrants are skilled workers, such as those from Europe and the United States who work in various educational institutions as foreign educators. See 王会聪 [Wang Huicong], 《中国教育部出新规打击非法外教》 [‘China’s Ministry of Education Issues New Rules to Combat Illegal Foreign Educators’] 环球网 *World Wide Web* (Web Page, 7 August 2019) <<https://baijiahao.baidu.com/s?id=1641158666004008774&wfr=spider&for=pc>>.

²⁷ 林孙俊 [Lin Sunjun] (n12) 34.

²⁸ *Ibid.*

²⁹ 罗刚 [Luo Gang], *云南边境民族地区非法移民问题及其治理研究* [Research on Illegal Immigration and Its Governance in Yunnan Border Ethnic Areas] (Law Press, 2012) 119.

Azhou Xiang (an illegal economic immigrant from Vietnam), who trafficked in drugs, is a typical example of damaging the order of border management.³⁰

Second, illegal economic immigration disrupts the social order. Illegal economic immigrants often escape the supervision of the Chinese government, making it difficult for the government to manage them. This can lead to group incidents,³¹ which have become a threat to social order. For example, on the afternoon of 15 July 2009, the Guangzhou police conducted spot arrests of illegal migrants. To avoid the passport check, one illegal economic immigrant jumped from a residential building and died; another did the same and was injured.³² Subsequently, hundreds of foreigners began to gather in Yuexiu District around the Kuangquan Police Station, spilling out into the surrounding roads, and there were even conflicts with police officers.³³

Third, illegal economic immigration breeds prostitution, theft, robbery, murder, and other types of criminal activities.³⁴ Illegal economic immigrants also tend to collude with international criminal gangs, conducting or taking part in cross-border crimes such as money laundering, human trafficking, smuggling, and drug trafficking, like the case of Tingrong Yang and Shishang Liang who committed robbery and human trafficking in 2010.³⁵

Fourth, illegal economic immigration may cause ethnic conflicts. Illegal economic immigrants come from different countries. They differ from local people by a large or small degree in terms of language, religion, and culture. When these diverse cultures collide, the differences often lead to cultural conflicts between residents and illegal economic immigrants. At the same time, because illegal economic immigrants' economic interests also conflict with those residents, the cultural conflicts may further escalate into ethnic conflicts. In this context, misunderstandings or conflicts between individuals are likely to escalate into discord among the ethnic groups.

³⁰ Hekou Yearbook Editorial Department, *Hekou Yao Autonomous County Yearbook in 2010* (Hekou Yearbook Editorial Department, 2010) 165–166.

³¹ Group incidents refer to specific social groups or a non-specific majority of people gathering on a large scale without legal basis and may lead to unlawful collective actions that endanger social order. They express their claims, directly strive for, or safeguard, their own interests, or vent their dissatisfaction, causing significant harm and disturbing social stability.

³² 郭烁 [Guo Shuo], 《大国新问题：在华外国非法移民的司法对策研究》 [A New Issue of the Great Power: A Study of the Judicial Countermeasures of Illegal Immigrants in China] (2012) 27(5) 清华大学学报（哲学社会科学版） *Journal of Tsinghua University (Philosophy and Social Sciences)* 134–42.

³³ Ibid.

³⁴ 罗刚 [Luo Gang] (n29) 115.

³⁵ Ibid.

For example, in Guangzhou, local people often clash with illegal immigrants from Africa. Radical remarks appear on the Internet, and some stores do not sell to Africans.³⁶

C Negative Impact on Population

When illegal economic immigrants move to China and compete with the residents for production resources and living resources, they cause the disorderly growth of China's population.³⁷ More seriously, the offspring of two illegal economic immigrants, or one illegal economic immigrant and one refugee, or one illegal economic immigrant and one resident, not only increases the population but also interferes with China's population management by disrupting the Constitution³⁸ and the Population and Family Planning Law.³⁹ The latter attempts to match population growth with economic and social development.

Also, illegal economic immigration has increased the consumption of natural resources and the destruction of the natural environment.⁴⁰ For any country, natural resources and the natural environment are important foundations for its development. Population rises often determine the consumption of natural resources and the damage to the natural environment.⁴¹ The entry of illegal economic immigrants has increased the population, enlarged the consumption of resources, and damaged the environment. At the same time as the population has increased, production has expanded and both the consumption of resources and damage to the environment have intensified. Moreover, for any country, nature has a limited population capacity. Once it exceeds that limit, the damage to the natural environment will be immeasurable. For example, in the second half of the 20th century, due to the war in Afghanistan, many Afghans flowed into Pakistan, placing a heavy burden on the local

³⁶ 《非法滞留广州黑人超 30 万，时不时和当地人冲突》[Illegal Overstayers from Africa in Guangzhou Is More than 300,000 and They Often Conflict with Local People] 金投网 [Gold Network] (Web Page, 15 August 2014) <<http://news.cngold.org/c/2014-08-15/c2704332.html>>.

³⁷ 罗刚 [Luo Gang] (n29) 119.

³⁸ 《中华人民共和国宪法》[*Constitution of the People's Republic of China*] (PRC) National People's Congress, 11 March 2018, art 49.

³⁹ 《中华人民共和国人口与计划生育法》[*Population and Family Planning Law of People's Republic of China*] (PRC) Standing Committee of the National People's Congress, 29 December 2001, art 1, 2, 5, and 18. 《关于修改〈中华人民共和国人口与计划生育法〉的决定》[*Decision on Amending Population and Family Planning Law of People's Republic of China*] (PRC) Standing Committee of the National People's Congress, 27 December 2015, art 1, 2, 5, and 18.

⁴⁰ 林孙俊 [Lin Sunjun] (n12) 34-35.

⁴¹ Ibid.

ecological environment.⁴² By 1994, deforestation had reduced the forest cover in the Afghan settlements of Pakistan by 58 per cent.⁴³ This situation will be even more severe for countries with relatively scarce natural resources and serious environmental damage.

D Negative Impact on Public Health

First, illegal economic immigrants may bring infectious diseases. Economic immigrants who enter China illegally do not have medical assessments, and those with infectious diseases will infect the residents of destination countries. For example, many illegal economic immigrants from Africa are from high-risk infectious areas, such as those dealing with the acquired immunodeficiency syndrome (AIDS) epidemic, posing a huge threat to public health in China.⁴⁴ Second, illegal economic immigrants may bring or smuggle wild animals or meat products that have infectious diseases.⁴⁵ Up to 78 per cent of human diseases, such as severe acute respiratory syndrome (SARS), avian influenza (bird flu), and Ebola, are caused by pathogenic sources from animals.⁴⁶ For example, Chinese police seized 20 tons of out-of-date meat from illegal Vietnamese economic immigrants in 2013, including chicken feet that were 46 years past their sell-by date.⁴⁷ This undoubtedly will cause great harm to people's health, and this harm will be serious nationwide. More importantly, meat products may even carry infectious diseases, such as avian influenza and foot-and-mouth disease, which will bring disaster to China.⁴⁸

⁴² 谢静 [Xie Jing], 《难民及边境毒品问题影响巴基斯坦与阿富汗的关系》 [*Refugee and Border Drug Issues Affect Pakistan-Afghanistan Relations*] (2013) 25 商情 *China Business* 189.

⁴³ Ibid; 林孙俊 [Lin Sunjun] (n12) 35.

⁴⁴ 《广州非洲籍非法移民的特征研究》 [*Study on the Characteristics of Illegal Immigration in Guangzhou*] (24 September 2014).

⁴⁵ 'Chinese Police Discover Chicken Feet For Sale 46 Years Past Sell-by date', *Daily Telegraph* (Web Page, 9 July 2013) <<http://www.telegraph.co.uk/news/worldnews/asia/china/10165968/Chinese-police-discover-chicken-feet-for-sale-46-years-past-sell-by-date.html>>.

⁴⁶ 《人类新发传染病 78% 与野生动物有关》 ['78% of Human Infectious Diseases Are Related to Wild Animals] 腾讯网 [Tencent Network] (Web Page, 7 August 2020) <<https://new.qq.com/omn/20200807/20200807A0H4T400.html>>.

⁴⁷ 'Chinese Police Discover Chicken Feet For Sale 46 Years Past Sell-by date' (n44).

⁴⁸ 《境外劣质鸡爪走私进入中国，或携带重大传染病源》 ['Foreign Poor-Quality Chicken Feet Were Smuggled into China and May Carry a Major Source of Infectious Diseases'] 搜狐新闻 [Sohu News] (Web Page, 27 October 2013) <<http://news.sohu.com/20131027/n388991058.shtml>>.

E Negative Impact on Illegal Economic Immigrants

There is no doubt that illegal economic immigration has endangered illegal immigrants' personal and property safety. For example, in March 2009, 300 illegal economic immigrants went missing at sea.⁴⁹ Also, due to their illegal status, illegal economic immigrants often choose to remain silent when their rights are violated. For example, in cases of robbery, fraud, theft, and other financial cases, illegal economic immigrants from Africa usually target their compatriots because they are familiar with them and know their victims will not report the crimes out of fear and mistrust of the Chinese police.⁵⁰

F Negative Impact on International Relations

Illegal economic immigration inevitably affects the relationship between the source country and the destination country.⁵¹ Not managing this issue properly will harm international relations. For example, it has damaged the relationship between China and Myanmar.⁵²

In conclusion, although illegal economic immigration has brought a few localised benefits to China, the negative impacts are multifaceted, serious, and nationwide.

III RESEARCH SIGNIFICANCE

This research is significant because it fills a gap in the literature. The findings will inform the Chinese government's formulation of a policy and regulatory framework for illegal economic immigration and Chinese migration law. Hopefully, other countries can also learn from this study.

A Literature Gap

There is little research on illegal economic immigration in China. The current international literature on immigration focuses mainly on specific matters, such as human trafficking and

⁴⁹ '300 Immigrants Missing in Storm off Libya: Reports', *ABC News* (Web Page, 31 March 2009) <<http://www.abc.net.au/news/2009-03-31/300-immigrants-missing-in-storm-off-libya-reports/1636898>>.

⁵⁰ 《广州非洲籍非法移民的特征研究》 [*Study on the Characteristics of Illegal Immigration in Guangzhou*] (24 September 2014).

⁵¹ David Held, *Global Transformations: Politics, Economics and Culture* (Stanford University Press, 1999).

⁵² 罗刚 [Luo Gang] (n29) 131.

refugees, or illegal immigration in specific countries such as the United States,⁵³ Australia,⁵⁴ European nations,⁵⁵ and Singapore.⁵⁶ There are also studies on immigration theories about the reasons for and impacts of illegal economic immigration, such as the new economics migration theory,⁵⁷ but these do not consider Chinese circumstances.

Although considerable research is devoted to immigration in the world, less attention has been paid to illegal immigration in China, especially from the perspective of law and policy.⁵⁸

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- ⁵³ Samantha Hauptman, *The Criminalization of Immigration: The Post 9/11 Moral Panic* (LFB Scholarly Publishing, 2013); Libby Garland, *After They Closed the Gates: Jewish Illegal Immigration to the United States, 1921–1965* (University of Chicago Press, 2014); Saltanat Liebert, ‘The Role of Informal Institutions in U.S. Immigration Policy: The Case of Illegal Labor Migration from Kyrgyzstan’ (2010) 70(3) *Public Administration Review* 390–400; Montserrat Viladrich Grau, ‘The Regulation of Illegal Immigration in the United States of America’ (1998) 42 *Revista CIDOB d’afers Internacionals* 59–77; Kevin R Johnson, *Opening the Floodgates Why America Needs to Rethink Its Borders and Immigration Laws* (New York University Press, 2007).
- ⁵⁴ Mary Crock and Daniel Ghezelbash, ‘Do Loose Lips Bring Ships? The Role of Policy, Politics and Human Rights in Managing Unauthorised Boat Arrivals’ (2010) 19(2) *Griffith Law Review* 238–87; Michael Grewcock, *Border Crimes: Australia’s War on Illicit Migrants* (Institute of Criminology Press, 2009); ‘The Impact of Socioeconomic Factors in Regional Asian Nations and Illegal Immigration on Australia’s Security Outlook’ (1996) 120 *Australian Defence Force Journal* 39–42; Human Rights Equal Opportunity Commission, *Those Who’ve Come across the Seas: Detention of Unauthorised Arrivals* (Human Rights and Equal Opportunity Commission, 1998).
- ⁵⁵ Ruben Andersson, *Illegality, Inc. Clandestine Migration and the Business of Bordering Europe* (University of California Press, 2014); Atta Addo, ‘Porous Policies: Illegal Immigration in Europe’ (2006) 28(3) *Harvard International Review* 10–11; Basak Kale, ‘A Threat against Europe? Security, Migration and Integration’ (2014) 19(1) *Centre for Strategic Research* 191; Klaus J Bade, ‘Legal and Illegal Immigration into Europe: Experiences and Challenges’ (2004) 12(3) *European Review* 339–375.
- ⁵⁶ Siew Hoon Tan, ‘Illegal Immigration to Singapore’ (Faculty of Arts and Social Sciences, University of New South Wales, 2009); Michael Hor, ‘Illegal Immigration: Principle and Pragmatism in the Criminal Law’ (2002) 14(1) *Singapore Academy of Law Journal* 18–48; Gerard Sullivan and Sununta Siengthai, ‘Labour Migration and Policy Formation in a Newly Industrialized Country: A Case Study of Illegal Thai Workers in Singapore’ (1992) 9(1) *ASEAN Economic Bulletin* 66–84. Other countries include Greece, such as Lia Figgou, ‘Constructions of Illegal Immigration and Entitlement to Citizenship: Debating an Immigration Law in Greece’ (2016) 26(2) *Journal of Community & Applied Social Psychology* 150–163; Ireland, such as Stefan Wallaschek, ‘Political and Media Discourses of Illegal Immigration in Ireland’ (2017) 32(2) *Routledge* 356–358; and the Netherlands, such as Joanne Van der Leun, *Looking for Loopholes Processes of Incorporation of Illegal Immigrants in the Netherlands* (Amsterdam University Press, 2003).
- ⁵⁷ The representatives are Oded Stark and J Edward Taylor. It explains that the subject of immigration is not the person but the family. The purpose of immigration is not always to gain high wages but, more importantly, to reduce risk and seek more ways of earning money. That is to say, the factors that affect immigration decisions are not only the labour market, but also the insurance market, the capital market, and so on. Therefore, immigration may not occur when there is a wage gap between countries, while immigration may occur when there is no wage gap between countries. See Oded Stark, *Altruism and Beyond an Economic Analysis of Transfers and Exchanges within Families and Groups* (Cambridge University Press, 1995); J Edward Taylor, *Essentials of Development Economics* (University of California Press, 2015).
- ⁵⁸ Mary Crock, *Immigration and Refugee Law in Australia* (Federation Press, 1998); Mary Crock, *Immigration, Refugees and Forced Migration: Law, Policy and Practice in Australia* (Federation Press, 2011); Mary Crock and Kate Bones, ‘Australian Exceptionalism: Temporary Protection and the Rights of Refugees’ (2015) 16(2) *Melbourne Journal of International Law* 522–549; Mary Crock and Hannah Martin, ‘Refugee Rights and the Merits of Appeals’ (2013) 32(1) *The University of Queensland Law*

In terms of illegal economic immigration, scholars have researched illegal economic immigration in Australia,⁵⁹ the United States,⁶⁰ Singapore,⁶¹ Europe,⁶² Greece,⁶³ Ireland,⁶⁴ and the Netherlands,⁶⁵ but there is no research on illegal economic immigration in China.

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- Journal* 137–155; Mary Crock, *Future Seekers: Refugees and the Law in Australia* (Federation Press, 2002); Mary Crock, *Creating New Futures: Settling Children and Youth from Refugee Backgrounds* (Federation Press, 2015). Kim Rubenstein, ‘Review Essay: The Centrality of Migration to Citizenship’ (2003) 7(2) *Citizenship Studies* 255–265; Kim Rubenstein, ‘The Lottery of Citizenship: The Changing Significance of Birthplace, Territory and Residence to the Australian Membership Prize’ (2004) 22(2) *Law in Context* 45–61. Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford University Press, 2006); Hélène Lambert, Jane McAdam and Maryellen Fullerton, *The Global Reach of European Refugee Law* (Cambridge University Press, 2013); Jane McAdam, *Complementary Protection in International Refugee Law* (Oxford University Press, 2007); Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press, 2012); Jane McAdam and Fiona Chong, *Refugees: Why Seeking Asylum Is Legal and Australia’s Policies Are Not* (University of New South Wales Press, 2014). Brian Opeskin, ‘Managing International Migration in Australia: Human Rights and the “Last Major Redoubt of Unfettered National Sovereignty”’ (2012) 46(3) *International Migration Review* 551–85; Brian Opeskin, *Foundations of International Migration Law* (Cambridge University Press, 2012). J C Simeon, *Critical Issues in International Refugee Law: Strategies toward Interpretative Harmony* (Cambridge University Press, 2010); J C Simeon, *The UNHCR and the Supervision of International Refugee Law* (Cambridge University Press, 2013). Galina Cornelisse, ‘Human Rights for Immigration Detainees in Strasbourg: Limited Sovereignty or a Limited Discourse’ (2004) 6(2) *European Journal of Migration and Law* 93–110; Galina Cornelisse, ‘Reviews: The Dynamics of International Migration and Settlement in Europe’ (2008) 1(1) *Amsterdam Law Forum* 115–18; Galina Cornelisse, *Immigration Detention and Human Rights Rethinking Territorial Sovereignty* (BRILL, 2010); Galina Cornelisse, ‘Territory, Procedures and Rights: Border Procedures in European Asylum Law’ (2016) 35(1) *Refugee Survey Quarterly* 74–90; Galina Cornelisse, ‘Inside Immigration Detention’ (2017) *Journal of Borderlands Studies* 1–3. Gina Clayton, ‘Asylum Seekers in Europe: M.S.S. v Belgium and Greece’ (2011) 11(4) *Human Rights Law Review* 758–773; Gina Clayton, *Textbook on Immigration and Asylum Law* (Oxford University Press, 2014). Helen Toner, ‘European Migration Law’ (2010) 10(3) *Human Rights Law Review* 592–94. Elspeth Guild and Paul Minderhoud, *The First Decade of EU Migration and Asylum Law* (Martinus Nijhoff, 2011); Elspeth Guild, Paul Minderhoud and European Commission, *Immigration and Criminal Law in the European Union: The Legal Measures and Social Consequences of Criminal Law in Member States on Trafficking and Smuggling in Human Beings* (Martinus Nijhoff, 2006). Alice Edwards and Carla Ferstman, *Human Security and Non-citizens: Law, Policy and International Affairs* (Cambridge University Press, 2010). Leanne Weber, *Rethinking Border Control for a Globalizing World: A Preferred Future* (Routledge, 2015).
- ⁵⁹ Crock and Ghezelbash (n54); Grewcock, (n54); ‘The Impact of Socioeconomic Factors in Regional Asian Nations and Illegal Immigration on Australia’s Security Outlook’ (n54); Human Rights Equal Opportunity Commission (n54).
- ⁶⁰ Hauptman (n53); Garland (n53); Liebert (n53); Grau (n53); Johnson (n53).
- ⁶¹ Siew Hoon Tan, ‘Illegal Immigration to Singapore’ (Faculty of Arts and Social Sciences, University of New South Wales, 2009); Michael Hor, ‘Illegal Immigration: Principle and Pragmatism in the Criminal Law’ (2002) 14(1) *Singapore Academy of Law Journal* 18–48; Gerard Sullivan and Sununta Siengthai, ‘Labour Migration and Policy Formation in a Newly Industrialized Country: A Case Study of Illegal Thai Workers in Singapore’ (1992) 9(1) *ASEAN Economic Bulletin* 66–84.
- ⁶² Andersson (n55); Addo (n55); Kale (n55); Bade (n55).
- ⁶³ Lia Figgou, ‘Constructions of Illegal Immigration and Entitlement to Citizenship: Debating an Immigration Law in Greece’ (2016) 26(2) *Journal of Community & Applied Social Psychology* 150–163.
- ⁶⁴ Elaine Burroughs, ‘Discursive Representations of Illegal Immigration in the Irish Newsprint Media: The Domination and Multiple Facets of the Control Argumentation’ (2015) 26(2) *Discourse & Society* 165–83; Stefan Wallaschek, ‘Political and Media Discourses of Illegal Immigration in Ireland’ (2017) 32(2) *Irish Political Studies* 356–58.
- ⁶⁵ Joanne Van der Leun, *Looking for Loopholes Processes of Incorporation of Illegal Immigrants in the Netherlands* (Amsterdam University Press, 2003).

There are publications on the reasons for immigration, including illegal economic immigration. Relevant theories form two groups: *the economic theory group*, including push-pull theory, neoclassical economics migration theory, new economics migration theory, and labour market segmentation theory, and *the system theory group* such as world-systems theory and migration system theory.

1 Economic Theory Group

Ernst Georg Ravenstein was the first scholar to research migration. His publication of *The Laws of Migration* in 1889 proposed seven principles of migration.⁶⁶ In the study of the causes of population mobility, the most important macro theory in demography is the push-pull theory, a theory first proposed by Donald Joseph Bogue in 1970.⁶⁷ Others, including Gunnar Myrdal,⁶⁸ N V Sovani,⁶⁹ Glenn Trewartha,⁷⁰ Everett Lee,⁷¹ and Stephen Castles,⁷² have revised and developed this theory.

The representatives of the *neoclassical economics migration theory* are Larry Sjaastad⁷³ and Michael Todaro.⁷⁴ This theory emerged directly from William Arthur Lewis's dual economy and equilibrium model, and it focuses on the motivation of immigration behaviour from an economic point of view.⁷⁵ Cazes and Verick⁷⁶ did their research on labour economics, which revealed that the most important factor is the economic imbalance between the countries of origin and the countries of destination, especially the wage gaps. According to George J Borjas,⁷⁷ neoclassical economics migration theory, like push-pull theory, emphasises the role of the principle of personal maximum utility in the process of migration.

⁶⁶ E G Ravenstein, 'The Laws of Migration' (1889) 52(2) *Journal of the Royal Statistical Society* 241–305.

⁶⁷ Donald J Bogue, 'Principles of Demography' (1970) 35(2) *American Sociological Review* 412–13.

⁶⁸ Gunnar Myrdal, 'Economic Theory and Under-Developed Regions' (1960) 27(107) *Economics* 280–83.

⁶⁹ H Wentworth Eldredge, 'Urbanization and Urban India' (1966) 31(6) *American Sociological Review* 885–86.

⁷⁰ Glenn Thomas Trewartha, 'A Geography of Population' (1971) 25(1) *Population Studies* 158.

⁷¹ Everett S Lee, 'A Theory of Migration' (1966) 3(1) *Demography* 47–57.

⁷² Stephen Castles, 'The Forces Driving Global Migration' (2013) 34(2) *Journal of Intercultural Studies* 122–40.

⁷³ Larry A Sjaastad, 'The Costs and Returns of Human Migration' (1962) 70(5) *Journal of Political Economy* 80–93.

⁷⁴ Michael P Todaro, 'Internal Migration and Urban Employment: Comment' (1986) 76(3) *The American Economic Review* 566–69.

⁷⁵ W Arthur Lewis, *The Theory of Economic Growth* (Routledge, 2004).

⁷⁶ Sandrine Cazes and Sher Verick, *Perspectives on Labour Economics for Development* (ILO, 2013).

⁷⁷ George J Borjas, 'Economic Theory and International Migration' (1989) 23(3) *International Migration Review* 457–85.

The *new economics migration theory* comes from the internal criticism and repair of the neoclassical economics migration theory. The representatives are Oded Stark⁷⁸ and J Edward Taylor.⁷⁹ It explains that the subject of migration is not the person but the family. The purpose of migration is not always to gain high wages but, more importantly, to reduce migration risk and seek more ways of earning money. That is to say, the factors that affect migration decisions are not only the labour market but also the insurance market and the capital market. Therefore, migration may not occur when there is a wage gap between countries, while migration may occur when there is no wage gap between countries.

Labour market segmentation theory was first proposed by Peter Doeringer⁸⁰ and Michael Piore.⁸¹ It shows that, with the development of industrialisation, there are capital-intensive, high-efficiency, high-income sectors and labour-intensive, low-efficiency and low-income sectors in developed countries, which leads to the emergence of dual labour markets. As residents are reluctant to enter inefficient, low-income labour markets, they must rely on immigrants. Immigration has become a social and economic structural demand in developed countries.

2 System Theory Group

The representatives of *world-systems theory* are Immanuel Wallerstein,⁸² Andre Gunder Frank,⁸³ and Terence K Hopkins.⁸⁴ According to this theory, the emergence of international migration is not only because of the needs of the developed countries but also the forced involvement of the underdeveloped countries in the capitalist world market. The external expansion of capitalism leads to the global flow of goods, capital, information, and labour, and unequal international relations make the labour force of underdeveloped countries become the target of the developed countries.

⁷⁸ Oded Stark, *Altruism and Beyond an Economic Analysis of Transfers and Exchanges within Families and Groups* (Cambridge University Press, 1995).

⁷⁹ J Edward Taylor and Travis J Lybbert, *Essentials of Development Economics* (University of California Press, 2015).

⁸⁰ Peter Doeringer, 'Market Structure, Jobs, and Productivity: Observations from Jamaica' (1988) 16(4) *World Development* 465–82.

⁸¹ Michael Piore, 'The Shifting Grounds for Immigration' (1986) 485 *The Annals of the American Academy of Political and Social Science* 23–33.

⁸² Immanuel Wallerstein, *The Modern World-System I: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (University of California Press, 2011).

⁸³ Andre Gunder Frank, *World Accumulation 1492–1789* (Algora Publishing, 2007).

⁸⁴ Victor Nee, Terence K Hopkins and Immanuel Wallerstein, 'Processes of the World-System' (1984) 62(4) *Social Forces* 1104–05.

The migration system theory is based on the study of urban and rural migrants in Africa by Akin Mabogunje⁸⁵ and was proposed by Mary Kritz,⁸⁶ Lin Lean Lim,⁸⁷ and Hania Zlotnic.⁸⁸ These scholars believe that international migration is not only a product of specific economic relations but also of specific political, historical, and cultural conditions. Therefore, to reveal the reasons and characteristics of migration, it is necessary to research the complex relationships between the countries of origin and the countries of destination. For example, Jamaican immigrants to the United Kingdom, Martinique Island immigrants to France, Suriname immigrants to Holland, and Algerian immigrants to France are closely related to the political, economic, and cultural environments formed by the previous colonial rule.⁸⁹ However, no research study has considered Chinese circumstances.

⁸⁵ Akin Mabogunje, 'Agrarian Responses to Outmigration in Sub-Saharan Africa' (1989) 15 *Population and Development Review* 324–42.

⁸⁶ Mary M Kritz and Douglas T Gurak, 'U.S. Immigrants in Dispersed and Traditional Settlements: National Origin Heterogeneity' (2015) 49(1) *International Migration Review* 106–41; Mary M Kritz and Douglas T Gurak, 'The Impact of Immigration on the Internal Migration of Natives and Immigrants' (2001) 38(1) *Demography* 133–45; Mary M Kritz, Douglas T Gurak and Min-Ah Lee, 'Will They Stay? Foreign-Born Out-Migration from New U.S. Destinations' (2011) 30(4) *Population Research and Policy Review* 537–67; Mary M Kritz, Douglas T Gurak and Min-Ah Lee, 'Foreign-Born Out-Migration from New Destinations: Onward or Back to the Enclave' (2013) 42(2) *Social Science Research* 527–46.

⁸⁷ Lin Lean Lim, 'IUSSP Committee on International Migration, Workshop on International Migration Systems and Networks' (1987) 21(2) *The International Migration Review* 416–23.

⁸⁸ Hania Zlotnik, 'Expert Group Meeting on Population Distribution and Migration' (1994) 28(1) *The International Migration Review* 171–204; Hania Zlotnik, 'International Migration 1965–96: An Overview' (1998) 24(3) *Population and Development Review* 429–68; Hania Zlotnik, 'Population Growth and International Migration at the end of the 20th Century' (1999) 882(1) *Annals of the New York Academy of Sciences* 217–28.

⁸⁹ Ronald Skeldon, *Migration and Development: A Global Perspective* (Routledge, 2014).

There are also publications on the effects of illegal economic immigration, including the effect on social stability,⁹⁰ the economy,⁹¹ and international relationships.⁹² Once again, there is no work considering Chinese circumstances.

In terms of the current literature on China, traditional research focuses on illegal migration output, while Chinese scholars have just begun to study illegal economic immigration in China. There are articles on illegal economic immigration in China,⁹³ but they lack theoretical analysis. There are books on illegal economic immigration in the Yunnan border ethnic area⁹⁴ and a dissertation on illegal economic immigration in Guangzhou Municipal,⁹⁵ but they are studies on specific areas in China. Other studies on illegal economic immigration in China are not from the perspective of law and policy.⁹⁶ In all, there is no specific theoretical analysis and research on illegal economic immigration in China from the perspective of law and policy.

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- ⁹⁰ Rob T Guerette, 'Immigration Policy, Border Security, and Migrant Deaths: An Impact Evaluation of Life-saving Efforts under the Border Safety Initiative' (2007) 6(2) *Criminology & Public Policy* 245–66; Donald S Dobkin, *Behind the Green Card How Immigration Policy Is Killing the American Dream* (Algora Publishing, 2013); Jamie W McCallum, J Marcus Rowcliffe and Innes C Cuthill, 'Conservation on International Boundaries: The Impact of Security Barriers on Selected Terrestrial Mammals in Four Protected Areas in Arizona, USA' (2014) 9(4) *PloS One*; Vicki A Brown, *The Dark Side of Illegal Immigration: Cause for National Concern* (Createspace Independent Publishing Platform, 2014); Salaheddine Rezouni, *Illegal Immigration: Causes, Consequences, and National Security Implications* (Army War College Carlisle Barracks PA, 2010).
- ⁹¹ Barry Edmonston and Ronald Lee, *Local Fiscal Effects of Illegal Immigration: Report of a Workshop* (National Academies Press, 1996); Theodore Palivos, 'Welfare Effects of Illegal Immigration' (2009) 22(1) *Journal of Population Economics* 131–44; United States Commission on Civil Rights, *The Impact of Illegal Immigration on the Wages and Employment Opportunities of Black Workers: A Briefing before the United States Commission on Civil Rights held in Washington, DC* (United States Commission on Civil Rights, 2010).
- ⁹² Joaquin Garcia Silva, *Drug and Immigration Issues in the Mexico–US Relationship* (Naval Postgraduate School, 1994).
- ⁹³ 郭烁 [Guo Shuo], 《大国新问题:在华外国非法移民的司法对策研究》['A New Issue of the Great Power: A Study of the Judicial Countermeasures of Illegal Immigrants in China'] 2012 (27)5 清华大学学报 (哲学社会科学版) *Journal of Tsinghua University (Philosophy and Social Sciences)* 134–41; 李建 [Li Jian] and 罗大位 [Luo Dawei], 《非法移民除罪化趋势探究 – 兼议对我国“三非”外国人管理的启示》['A Probe into the Tendency of Illegal Immigration and Criminalization – Also on the Enlightenment to the Management of “Three-Non” Foreigners in China'] (2015) 1 净月学刊 *Jingyue Journal* 113–17; 宋全成 [Song Quancheng], 《非法外国移民在中国的现状、症结与对策》['Illegal Immigrants in China: The Present Situation, Crux and Countermeasures'] (2015) 1 山东大学学报 (哲学社会科学版) *Journal of Shandong University (Philosophy and Social Sciences)* 55–63.
- ⁹⁴ 罗刚 [Luo Gang] (n29).
- ⁹⁵ 梁玉成 [Liang Yucheng], 《在广州的非洲裔移民行为的因果机制 – 累积因果视野下的移民行为研究》['The Causal Mechanism of African Immigration in Guangzhou – The Study of Migration Behaviour under the Accumulation of Causality'] (2013) 1(1) 社会学研究 *Journal of Sociological Study* 134–59.
- ⁹⁶ 鸿鸣 [Hong Ming], 《当代中国入境非法移民问题研究》['A Study on the Problem of Illegal Immigration in China'] (PhD Thesis, 中央民族大学 [National University of China], 2011); 林孙俊 [Lin Sunjun], 《当代中国入境非法移民主要类型及治理研究》['Study on the Main Types and Governance

Therefore, it is time to fill the gap, draw attention to this issue, improve the regulatory framework, make recommendations to the Chinese government, and draw lessons for other countries.

B *Internal Forces*

The number of illegal economic immigrants in China and their share of the population are only two of the many factors that reflect the gravity of the issue. Although the proportion of illegal economic immigrants in the total population is not high, the serious impact of illegal economic immigration is multifaceted and nationwide. It is multifaceted because it has negative impacts on the economy, social stability, population, public health, international relationships, and the personal and property rights of illegal economic immigrants. Moreover, the impacts are serious nationwide.

The proportion of illegal economic immigrants in local populations in China is relatively high compared to other countries. For example, there are more than 50,000 illegal economic immigrants in Chongzuo City, accounting for 2 per cent of the population,⁹⁷ which is higher than the 1.2 per cent in Britain,⁹⁸ 0.76–0.94 per cent in the EU,⁹⁹ and 0.2 per cent in Australia.¹⁰⁰ Despite the low ratios in these countries, they have comprehensive regulatory systems regarding illegal economic immigration, compared to China where the regulatory framework is inadequate.

Although illegal economic immigration may bring benefits to China, it also causes a series of adverse effects. It is short-sighted to ignore these adverse effects and the issues produced by illegal economic immigration for the purpose of gaining the benefits. For example, illegal economic immigration may contribute positively to the economy by filling labour shortages, like in Chongzuo City, Guangxi Province.¹⁰¹ However, why shouldn't *legal* economic migrants

of Illegal Immigration in Contemporary China'] (PhD Thesis, 中国中央党校 [Central Committee Party School], 2019).

⁹⁷ 戴宏军 [Dai Hongjun] and 韦福安 [Wei Fuan], 《越南劳工非法涌入的成因及对策》 ['The Causes and Countermeasures of the Illegal Influx of Vietnamese Workers'] (2013) 5 开放导报 *China Opening Journal* 48–51.

⁹⁸ Bradford H Gray and Ewout Van Ginneken, 'Health Care for Undocumented Migrants: European Approaches' (December 2012) 5.

⁹⁹ Phillip Connor and Jeffrey S Passel, 'Europe's Unauthorized Immigrant Population Peaks in 2016, Then Levels Off' (13 November 2019).

¹⁰⁰ Alex Vedovi, 'Australia and Immigration: Lessons from Reagan's 1986 US Amnesty Law' (18 November 2019).

¹⁰¹ 戴宏军 [Dai Hongjun] and 韦福安 [Wei Fuan] (n97).

fill labour shortages? Current Chinese policy places strict restrictions on the employment of low-skilled foreigners. Therefore, it is necessary to adjust the policy to adapt to national conditions. Through the improvement of policies, labour shortages can be filled by legal low-skilled immigrants, thereby reducing the number of illegal economic immigrants, and avoiding risks such as illegal economic immigrants carrying infectious diseases. Second, illegal economic immigration may help a business to become more competitive by supplying low-cost labourers, but it also leads to other issues—for example, the need to deal with local workers' unemployment, the burden on the local population, illegal immigrants' children, and integration of illegal economic immigrants.

With the implementation of the One Belt and One Road Initiative in China, China's economy will continue to grow, and China will become an increasingly attractive destination for people from other countries, both legal economic immigrants and illegal economic immigrants. At the same time, China is about to face the issue of an ageing population. It has been projected that China will suffer the largest decrease in its total labour force and may become an immigration country.¹⁰² Inevitably, there will be a sustained growing trend of illegal economic immigrants in China. Therefore, the Chinese government should act proactively.

There are deficiencies in policy, law, management, and implementation concerning illegal economic immigration in China. The current regulatory framework not only cannot stop the potential illegal economic immigrants from coming to China but also cannot adequately deal with the issues produced by existing illegal economic immigrants.

IV RESEARCH PURPOSE

This study on illegal economic immigration in China seeks to:

- promote legal immigration and reduce illegal immigration;
- empower the current regulatory framework to deal with the issues produced by illegal economic immigrants;
- build a harmonious environment for entering and exiting China and an efficient employment process for foreigners; and
- promote an orderly international flow of human capital between China and other countries.

¹⁰² ILO, *Perspectives on Labour Economics for Development* (ILO, 2013) 128.

The three specific research outcomes are:

1. *a legal groundwork for reform of Chinese migration law*—one that will enhance the management of illegal economic immigration in China. Laying this legal groundwork is an essential precondition for further reform of the Chinese regulatory framework governing illegal economic immigration. The Chinese government, in pursuing policies of openness and reform, needs a more comprehensive legal framework as a reference to support the reform and improve the management of illegal economic immigration.
2. *recommendations for the Chinese government* in terms of legislation and enforcement; specifically, recommendations on:
 - how to improve the regulatory framework to promote an orderly international flow of people between China and other countries, and to reduce illegal immigration;
 - what needs to be taken into consideration to formulate specific provisions to make the regulatory system comprehensive and coherent;
 - what can be done to promote cooperation between different government departments;
 - what can be done to enhance cooperation between China and other countries;
 - what can be done to integrate illegal immigrants who should not be repatriated; and
 - how to treat illegal immigrants when they are found and investigated by the Chinese government.
3. *useful insights to stimulate further research*—hopefully, this thesis will draw the attention of more academics, providing them with the groundwork and a new perspective to analyse this issue. The current research on the existing and far-reaching issues of illegal economic immigration in China is still at the initial stage.

V RESEARCH QUESTIONS

This thesis develops the research work by asking the question *How can China improve the regulatory framework regarding illegal economic immigration?* To answer this question, a list of consequent questions was developed:

1. What is the current situation of illegal economic immigration in China?
 - a. How many illegal economic immigrants are there in China?
 - b. Where are they from?
 - c. Which areas in China are they mainly gathering in?

- d. What are the characteristics of illegal economic immigration in China?
2. What are the reasons for illegal economic immigrants coming to China?
 - a. What are the economic reasons?
 - a. What are the geographical reasons?
 - b. What are the policy reasons?
 - c. What are the historical and cultural reasons?
3. What is the current regulatory framework regarding illegal economic immigration in China?
 - a. What is the immigration policy in China?
 - b. What are the laws and regulations regarding illegal economic immigration in China?
 - c. Which departments manage this issue?
 - d. What is the current situation in terms of enforcement?
4. What are the problems with the current regulatory framework?
 - a. What are the problems in terms of policy?
 - a. What are the problems for laws and regulations?
 - b. What are the problems for management departments?
 - c. What problems do the police officers meet in practice?
5. How do other countries deal with this issue?
 - a. How does Russia deal with this issue?
 - b. How does Singapore deal with this issue?
6. How can China improve the regulatory framework regarding illegal economic immigration?
 - a. How can China improve the policy?
 - b. How can China improve the legislation?
 - c. How can China improve the management departments?
 - d. How can China improve enforcement?

VI RESEARCH METHOD

The multidisciplinary nature of this thesis has required adopting different approaches for evaluating the Chinese regulatory framework governing illegal economic immigration, including an analysis of migration law, legislation, administrative law, and public policy and

economics. The overall approach is based on traditional legal methods such as the analysis of the legal provisions, combined with insights from other disciplines such as the comparative method. Due to the practical nature of this research, interviews were conducted to learn the current situation and problems in practice. To be specific:

1. *Doctrinal analysis*: It was necessary to use doctrinal analysis in this thesis because the research purpose is to improve the current Chinese regulatory framework regarding illegal economic immigration, and doctrinal analysis is an appropriate method for law research.¹⁰³ The reference sources used for this thesis include primary legal sources, policies, and formal reports, as well as secondary sources such as texts, journal articles, research theses, news reports, and governmental speeches.
2. *Qualitative research*: To glean the current situation regarding illegal economic immigration in China and the issues or difficulties in handling it, 22 interviews were conducted, broken down as follows (see also Table 1.1):
 - a) seven interviews of 45–90 minutes each with police officers from public security departments. In China, public security departments manage illegal economic immigrants, and so the staff there know the issues arising from the implementation of the relevant law—such as how they find illegal economic immigrants, how they treat different types of illegal economic immigrants, and what they do after they find illegal economic immigrants.
 - b) five interviews of 45–90 minutes each with police officers from police stations. Police stations cooperate with public security departments to deal with illegal economic immigration. Moreover, as a grassroots department, the staff of police stations know more specific measures—such as how they find illegal economic immigrants and what they do after they find illegal economic immigrants.
 - c) five interviews of 45–90 minutes each with migration lawyers. Migration lawyers deal with many migration cases, so they know much about the issues arising from the relevant law and policy—such as why illegal economic immigrants exist in China or the problems with the relevant law and policy.

¹⁰³ Terry Hutchinson, ‘The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law’ (2016) 3 *Erasmus Law Review* 130–38.

- d) five interviews of 45–90 minutes each with relevant scholars. Migration scholars are familiar with the relevant Chinese law and come across illegal economic immigration cases, so they are in a position to provide useful information and suggestions.

Table 1.1: Interviewees

Date	Interviewee	Duration
28/03/2019	A (A police officer from the public security bureau)	60 minutes
29/03/2019	B (A police officer from the police station)	45 minutes
30/03/2019	C (A migration lawyer)	50 minutes
31/03/2019	D (A police officer from the police station)	45 minutes
02/04/2019	E (A police officer from the public security bureau)	90 minutes
03/04/2019	F (A police officer from the police station)	60 minutes
04/04/2019	G (A police officer from the public security bureau)	45 minutes
05/04/2019	H (A police officer from the public security bureau)	50 minutes
06/04/2019	I (A police officer from the police station)	45 minutes
07/04/2019	J (A police officer from the public security bureau)	70 minutes
08/04/2019	K (A migration law scholar)	80 minutes
09/04/2019	L (A police officer from the public security bureau)	90 minutes
12/04/2019	M (A police officer from the public security bureau)	90 minutes
14/04/2019	N (A police officer from the police station)	90 minutes
14/04/2019	O (A migration lawyer)	45 minutes
14/04/2019	P (A migration law scholar)	45 minutes
25/04/2019	Q (A migration lawyer)	50 minutes
26/04/2019	R (A migration law scholar)	80 minutes
30/04/2019	S (A migration lawyer)	45 minutes
01/05/2019	T (A migration law scholar)	60 minutes
01/05/2019	U (A migration law scholar)	60 minutes
05/05/2019	V (A migration lawyer)	80 minutes

3. *Comparative law*: Illegal economic immigration in Singapore and Russia is studied to find out what those countries have done to deal with this issue.
 - a) Singapore is a good model for China. First, like China, Singapore has many neighbouring countries, and its economy level is much higher than its neighbouring countries. This means it attracts many immigrants from neighbouring countries (such as the Philippines and Bangladesh), both legal economic immigrants and illegal economic immigrants.¹⁰⁴ Second, the law mode in Singapore has been called the Community Rule of Law. Singapore turns the basic values of Confucianism into the national consciousness, which is then developed into Asian Values.¹⁰⁵ As a result, the basic values in Singapore and China are similar. Third, there are many Chinese in Singapore, accounting for 74.3 per cent of its population in 2017.¹⁰⁶ Fourth, like China, Singapore has one controlling party. Therefore, China can draw lessons from Singapore.
 - b) Russia is also a good model for China. First, since the dissolution of the Soviet Union, Russia has many small neighbouring countries, and the economies in these countries are relatively underdeveloped, so people in these countries (such as Tajikistan, Uzbekistan, and Ukraine) are willing to migrate to Russia, even though Russia is not very developed.¹⁰⁷ For example, illegal migration activities are rampant on the border between Russia and Ukraine. A total of 11,000 illegal immigrants were found from 1999 to 2000.¹⁰⁸ Second, like China, Russia is a socialist country, and its legal system belongs to the civil law tradition. Historically, Soviet law has deeply influenced Chinese laws and China's legal system theory is derived from that of the Soviet Union. As a successor to the Soviet system, Russia also upholds the legal theories of the Soviet Union.¹⁰⁹ Even today, there are still many Chinese scholars studying Russian law,

¹⁰⁴ Siew Hoon Tan, 'Illegal Immigration to Singapore' (Faculty of Arts and Social Sciences, University of New South Wales, 2009).

¹⁰⁵ 侯健 [Hou Jian], 《新加坡的法治模式及其价值基础》 ['Rule of Law Model in Singapore and Its Value Basis'] (2004) 4 东南亚研究 *Southeast Asian Studies* 38–41.

¹⁰⁶ 'Population and Population Structure', *Department of Statistics Singapore* (Web Page, 24 September 2020) <<http://www.tablebuilder.singstat.gov.sg/publicfacing/createDataTable.action?refId=315>>.

¹⁰⁷ 李琪 [Li Qi], 《中国和俄罗斯非法移民法律控制研究》 ['Research on Illegal Immigrant for Law Control of China and Russia'] (新疆大学 [Xinjiang University], 2009).

¹⁰⁸ 但伟 [Dan Wei], *偷渡犯罪比较研究* [A Comparative Study on the Crime of Stowaways] (Law Press, 2004) 68.

¹⁰⁹ 王志华 [Wang Zhihua], 《中俄法律体系特色比较》 ['The Comparison of Characteristics between Chinese and Russian Legal Systems'] (2011) 29 人民论坛 *People's Forum* 81–83.

including illegal economic immigration in Russia.¹¹⁰ Therefore, China can learn from Russia. For example, Russia has introduced in law the concept of labour quotas. The number of quotas is determined by the government based on the country's actual demand for foreign labourers.¹¹¹ This is of immense importance to rebuilding the foreign labour market, and China may draw lessons from that.

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- ¹¹⁰ 恒之 [Heng Zhi], 《俄罗斯筑牢反偷渡防线》 [‘Russia Secures Anti-smuggling Defence’] (2020) 2 现代世界警察 *Modern World Police* 25–29; 高琳 [Gao Lin], 《国家安全视域下俄罗斯移民政策探析》 [‘Probe into Russia’s Immigration Policies from National Security Perspective’] (2019) 35(1) 武警学院学报 *Journal of the Armed Police Academy* 17–32; 张少宇 [Zhang Shaoyu] and 蒋莉 [Jiang Li], 《俄罗斯人口安全问题论析》 [‘Analysis of Russian Population Security’] (2018) 7 国际研究参考 *International Research Reference* 26–40; 于晓丽 [Yu Xiaoli], 《近几年俄罗斯移民政策的新变化》 [‘Changes in Russian Immigration Policy in Recent Years’] (2017) 6 世界民族 *World Ethno-National Studies* 88–94; 张峰 [Zhang Feng], 《当代俄罗斯国家移民政策的演变》 [‘Evolution of the National Migration Policy in Contemporary Russia’] (北京外国语大学 [Beijing Foreign Studies University], 2016); 蒋莉 [Jiang Li], 《俄罗斯的外来移民问题》 [‘The Problem of Immigrants in Russia’] (2015) 10 国际研究参考 *International Research Reference* 27–36; 曹伊 [Cao Yi], 《俄罗斯与中亚的非传统安全合作研究》 [‘Research on Non-Traditional Security Cooperation between Russia and Central Asia’] (PhD Thesis, 北京外国语大学 [Beijing Foreign Studies University], 2014); 程春华 [Cheng Chunhua], 《俄罗斯为何整顿非法移民》 [‘Why Did Russia Regulate Illegal Immigrants?’] (2013) 21 世界知识 *World Knowledge* 42–43; 索妍 [Suo Yan], 《外国劳动移民对俄罗斯经济发展的影响分析》 [‘The Analysis of the Effect of Foreign Labour Migrants on Sustained Economic Growth of Russia’] (哈尔滨工业大学 [Harbin Institute of Technology], 2013); 高际香 [Gao Jixiang], 《俄罗斯外来移民与移民政策选择》 [‘Immigrants in Russia and the Choice of Immigration Policy’] (2012) 5 俄罗斯中亚东欧市场 *Russian Central Asian & East European Market* 16–22; 于小琴 [Yu Xiaoqin], 《危机背景下俄罗斯劳动移民的现状与发展》 [‘Discussion, Actuality and Development of Foreign Immigrants on the Background of Crisis’] (2011) 6 人口学刊 *Population Journal* 58–64; 强晓云 [Qiang Xiaoyun], 《移民对当代中俄关系的影响—非传统安全视角的分析》 [‘The Impact of Immigration on Contemporary Sino-Russian Relations—Analysis from a Non-traditional Security Perspective’] (Current Affairs Press, 2010); 朱陆民 [Zhu Lumin] and 汤希 [Tang Xi], 《非法移民问题与中亚安全》 [‘Illegal Immigration and Security in Central Asia’] [2009] (26) 2 河北工程大学学报 (社会科学版) *Journal of Hebei University of Engineering (Social Science Edition)* 64–66; 李琪 [Li Qi], 《中国和俄罗斯非法移民法律控制研究》 [Research on Illegal Immigrant for Law Control of China and Russia] (新疆大学 [Xinjiang University], 2009); 刁秀华 [Diao Xiuhua], 《俄罗斯转轨时期移民问题研究》 [‘Study on the Immigrant Problem of Russia in Transition Period’] (2008) 4 人口学刊 *Population Journal* 35–40; 徐海燕 [Xu Haiyan], 《俄罗斯的非非法移民问题》 [Illegal Immigration in Russia] (2007) 6 国际资料信息 *International Information* 22–25; 徐海燕 [Xu Haiyan], 《俄罗斯民族迁徙进程中的非法移民问题》 [‘Illegal Immigration in the Process of National Migration in Russia’] (2007) 9 俄罗斯中亚东欧市场 *Russian Central Asian & East European Market* 18–21; 强晓云 [Qiang Xiaoyun] and 马春海 [Ma Chunhai], 《当代俄罗斯移民政策透析》 [‘Analysis of Contemporary Russian Immigration Policy’] (2005) 2 *Russian Studies* 26–30.
- ¹¹¹ 徐海燕 [Xu Haiyan], 《俄罗斯的非非法移民问题》 [‘Illegal Immigration in Russia’] (2007) 6 国际资料信息 *International Information* 22–25.

VII CONTRIBUTIONS AND LIMITATIONS

A Contributions

This thesis is likely to contribute to the existing literature. It analyses illegal economic immigration in China from two aspects: legislation and enforcement. In terms of legislation, it focuses on stakeholder theory, which is an innovative point because no one has used stakeholder theory to discuss the topic of illegal economic immigration in China before. Moreover, although numerous domestic and international scholars have conducted in-depth research on the theory of immigration law, few have combined the theory of immigration law with stakeholder theory to find out the stakeholders of the illegal immigration issue. In terms of enforcement, although some scholars have raised specific problems, these problems have not been summarised into an organisational framework. This thesis has discovered many practical problems through the interviews and believes that the core of these problems is the lack of a complete organisational framework. Therefore, this research proposes an organisational model concerning enforcement.

Much time and energy were spent interviewing professional staff and obtaining valuable information. It took more than half a year to prepare interview questions (for personnel in different departments, there are four types of interview questions), contact the potential interviewees, apply for, and obtain ethics approval, travel to China to conduct the interviews, and summarise the content of the interviews. Through the interviews, valuable information was obtained that was not available in the literature so that I was able to learn the practical problems and target my recommendations.

B Limitations

This thesis has certain limitations.

1. Twenty-two interviews were conducted: seven police officers from public security departments, five officers from police stations, five migration lawyers, and five relevant scholars. However, no one from the National Immigration Administration was interviewed, nor any illegal immigrants. If future scholars could interview personnel from the National Immigration Administration and illegal immigrants, the information would be more comprehensive.
2. This study is from the perspective of the destination country (China). If future research could also focus on the source country, the conclusions would be more complete.

3. This research provides recommendations for the Chinese government. While other countries and some scholars may draw lessons from it, it would be better if international organisations could be involved in any future research.

VIII THESIS STRUCTURE

The thesis is divided into six chapters:

Chapter One: Introduction

This introductory chapter briefly sets out the research background, significance, objectives, research questions, research methodology, contributions and limitations, and structure of the research. It gives a general picture of this thesis.

Chapter Two: Theoretical framework

In developing the analytical rationale, it was necessary to decide at the outset what the theoretical foundations of this thesis would be. This chapter discusses the theories of law and policy as well as theories of immigration law and explains why these theories were chosen over others. These theories are applied throughout the thesis.

Chapter Three: Illegal economic immigration in China—The current situation

This chapter defines the term ‘illegal economic immigration’, explains the current situation and reasons for illegal economic immigration in China, and the current regulatory framework, including policy, legislation, and enforcement. The interviews are also analysed in this chapter.

Chapter Four: Illegal economic immigration in the international community

This chapter discusses how the international community deals with the issue of illegal economic immigration. Singapore and Russia are chosen as models because of their similarities to China, which means China can draw lessons from them.

Chapter Five: Recommendations

This chapter seeks possible solutions to the issues associated with illegal economic immigration in China by offering a series of recommendations.

Chapter Six: Summary and Conclusion

This last chapter summarises the findings of the earlier chapters and brings the thesis to a close.

CHAPTER TWO: THEORETICAL FRAMEWORK

I INTRODUCTION

This thesis is written from a law and policy perspective, and the recommendations are made according to theories on law and policy. The theoretical framework has two parts: (1) policy and (2) law. The law is to implement policy and policy guides the law. In terms of policy, the policymaking theory is used.¹¹² The law is essentially twofold: legislation and enforcement. In terms of legislation, stakeholder theory and immigration theory are applied. Legislators may consider stakeholders' interests when formulating legal provisions. At the same time, immigration theory is applied to decide who are the stakeholders in the field of immigration law. In terms of enforcement, the organisational model is chosen. The interviews revealed that there is a poor organisational structure in China and hence the organisational model may be a solution.

It needs to be explained that law and policy have a complex nexus, and it is difficult to separate them since they have many common factors and junctions. For example, policymaking theory can also be applied when making legislation while stakeholder theory should also be considered when making policy. Figure 2.1 outlines the theoretical framework of this thesis.

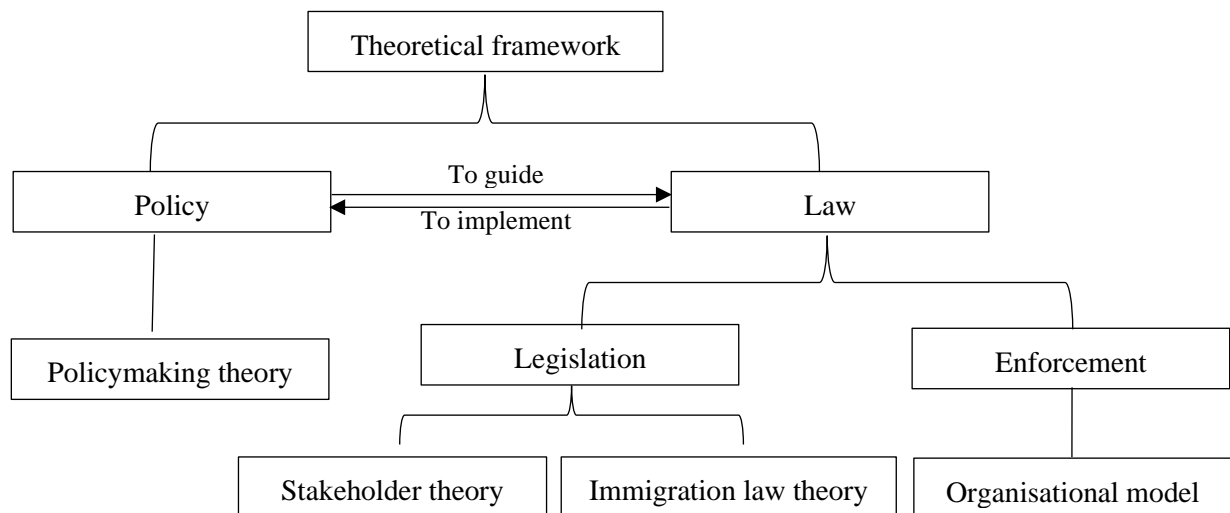


Figure 2.1: Theoretical framework

¹¹² For more about policymaking theory, see Charles E Lindblom, *The Policy-making Process* (Prentice Hall, 3rd ed, 1993).

II POLICY

Before describing the theory of policy, it is important to clarify the definition of ‘policy’. Politicians often use this word in their speeches, lawmakers make laws based on policies, officials are always asked the current policy on a specific issue, and scholars research from the perspective of policy. But what is policy?

A Defining Policy

The World Book Dictionary defines ‘policy’ as ‘a plan of action; a way of management’.¹¹³ The same dictionary describes the old definition of ‘policy’ as ‘the conduct of public affairs—e.g. government policy’ as obsolete.¹¹⁴ In this thesis, ‘policy’ refers to the action principles formulated by a government, which represents the government’s attitude towards a certain issue; for example, whether the Chinese government adopts a loose introduction policy or a strict restriction policy on immigration.

B What Is Policy Research?

Policy research has a short history but a rapid developmental trajectory. As theories of policy have matured over time,¹¹⁵ the objective of policy research is to conduct government activities to solve public problems.

C What Is Policymaking Theory?

Charles Lindblom’s seminal book *The Policy-Making Process* (first published in 1968) saw the policymaking process as political, but Lindblom emphasised the balance of various factors: politics, the economy, individual interests, and national interests.¹¹⁶

For the formulation of immigration policies, the political factor that policymakers need to consider is international relations. Immigration is not only an issue for the receiving country. It also involves the sending country and the transit country, which will inevitably affect international relations. Therefore, international relations must be considered when formulating immigration policy.¹¹⁷

¹¹³ James D Wallace, ‘What Is Policy?’ (1972) 106(9) *Canadian Medical Association Journal* 1017.

¹¹⁴ Ibid.

¹¹⁵ 吴锡泓 [Wu Xihong] and 金荣枰 [Jin Rongping], *政策学的主要理论* [Main theories of Policy Research] (Fudan University Press, 2005).

¹¹⁶ Lindblom (n112).

¹¹⁷ More details are discussed in Chapter Five.

Economic reasons are the root cause of migration, and immigrants' needs are determined by the labour market. Therefore, economic factors need to be considered when formulating immigration policy.¹¹⁸

Individual interests refer to the interests of immigrants. According to the Universal Declaration of Human Rights¹¹⁹ and the International Convention on the Protection of the Rights of All Migrant Workers and Their Families,¹²⁰ the rights of immigrants must be protected.¹²¹

National interests are the foundation of any country. When formulating an immigration policy, national interests should be considered, especially from a long-term perspective. This requires consideration of population structure, labour demand, and forecasts of future development.¹²²

The goal of policymaking theory is to apply a policy to practice. The theory considers various factors and tries to achieve a balance by using a series of processes, so the policy is reasonable and realistic. Thus, policymaking theory is used in this thesis and other theories are excluded for the following reasons:

1. *Procedural rationality theory* is closely related to the policymaking process. It is a collection of policymaking methods, including who, when, and how to participate in the policymaking process and rules that allow participation in policymaking.¹²³ This theory is not that relevant to this research, however, as the central purpose of this research is to decide what the policy should be rather than the procedure of policymaking. This does not mean that the procedure of policymaking is not important. There is no doubt that procedural rationality is a premise of policymaking; nevertheless, it is not a focus of this thesis. In other words, this thesis assumes that the procedure is rational, and the purpose of this thesis is to find out how to make a rational policy.
2. The core of *institutional research theory* is the 'actor model' proposed by Elinor Ostrom. It refers to an individual or a common actor who is in a certain behavioural state. The actor model is composed of the actor's information level of the behavioural status, the value

¹¹⁸ More details are discussed in Chapter Five.

¹¹⁹ *Universal Declaration of Human Rights 1948*, UDHR, G.A. res.217 A(III), UN Doc. A/810, UDHR, art 16 and 25.

¹²⁰ *International Convention on the Protection of the Rights of All Migrant Workers and Their Families 1990*, 3 months after 20 ratifications, UNGA Res. 45/158, art 25-33.

¹²¹ More details are discussed in Chapter Five.

¹²² More details are discussed in Chapter Five.

¹²³ Herbert A Simon, 'From Substantive to Procedural Rationality' (1976) 25 *Economic Theory* 65–86.

evaluation, and the assumption of the computing ability of the interest relationship.¹²⁴ Similarly, this theory is not unimportant, but the premise of using it is to balance different factors. Therefore, policymaking theory is more appropriate to this thesis.

3. *Nonmarket failure theory* can be seen as government failure theory, although the scope of the nonmarket is larger than the government. This theory illustrates why government policies fail. It believes that market factors should be used to address government failure.¹²⁵ However, the theory is not as comprehensive as policymaking theory. It only emphasises the economic factors while ignoring the political factors, individual interests, and national interests.
4. *Policy paradox and political reason theory* believes that policy should be based on political reason instead of rationality.¹²⁶ This theory has made a great contribution to the understanding of rationality and policy paradox and has made people realise that policy is a product of the political process.¹²⁷ But it is not as comprehensive as policymaking theory. It only emphasises the political factors while ignoring the economic factors, individual interests, and national interests.

III LAW

A What Is Law?

It is difficult to define ‘law’ because, to some extent, it is a philosophical question and the answers to this question have not reached a consensus.¹²⁸ Some theorists even think that it is useless to define ‘law’;¹²⁹ that, compared with the definition, the function of law is more important.

According to Tamanaha Brian, ‘Law is rooted in the history of a society, continuously remade in relation to social factors. Law is an integral aspect of society and society-infused law, their interaction mutually constitutive and bidirectional in cause and effect.’¹³⁰ Therefore, a new

¹²⁴ Elinor Ostrom, *Governing the Commons* (Cambridge University Press, 1990).

¹²⁵ Charles Wolf Jr., *Markets or Governments: Choosing between Imperfect Alternatives* (The MIT Press, 1988).

¹²⁶ Deborah A Stone, *Policy Paradox and Political Reason* (Scott Foresman and Company, 1988).

¹²⁷ Ibid.

¹²⁸ Tamanaha Z Brian, *A Realistic Theory of Law* (Cambridge University Press, 2017).

¹²⁹ Hermann Kantorowicz, *The Definition of Law* (Cambridge University Press, 1958).

¹³⁰ Tamanaha Z Brian, *A Realistic Theory of Law* (Cambridge University Press, 2017) 1.

social phenomenon may lead to the emergence of a new law. Moreover, whether a new law should be formulated or not depends on the necessity, feasibility, and benefits of the legislation. For example, the legislation for the Chinese migration law has been under discussion for several years. This thesis will analyse the necessity, feasibility, and benefits of formulating the Chinese migration law.¹³¹

Also, when formulating specific legal provisions, stakeholder theory and immigration law theory should be applied.

1 Stakeholder Theory

Edward Freeman defines a stakeholder as ‘any group or individual who can affect or is affected by the achievement of the firm’s objectives’.¹³² Businesses must pay attention at least to customers, employees, suppliers, communities, and financiers.¹³³ Freeman also thinks that the performance of a corporation largely depends on its capacity to negotiate, balance, and satisfy the demands and interests of various internal and external stakeholders.¹³⁴ According to Freeman, the major goal of the corporation is to assess the stakeholders and their demands and to respond properly to the stakeholders’ expectations at the same time as the corporation’s goals and objectives are achieved.¹³⁵ This is the traditional meaning of stakeholder. Then the application range was enlarged to encompass public management. Swedish scholar Vedung, who explored the assessment model from the perspective of stakeholders, introduced the notion of ‘stakeholder’ into law.¹³⁶ Therefore, legislators need to consider the interests of various stakeholders when formulating legal provisions. However, there are different stakeholders in different situations. As this thesis is about illegal immigration, immigration law theory should be discussed. By learning about immigration law theory, it can be understood what factors should be taken into consideration when formulating immigration legal provisions, who should be included as the stakeholders, and what interests the stakeholders have.

¹³¹ More details are discussed in Chapter Five.

¹³² R Edward Freeman, *Strategic Management: A Stakeholder Approach* (Cambridge University Press, 2010) 46.

¹³³ R Edward Freeman, et al, *Stakeholder Theory: The State of the Art* (Cambridge University Press, 2010).

¹³⁴ Robert Phillips, et al, ‘What Stakeholder Theory Is Not’ (2003) 4(13) *Business Ethics Quarterly* 479–502.

¹³⁵ Freeman (n132) 46.

¹³⁶ Evert Vedung, *Public Policy and Program Evaluation* (Routledge, 2017).

2 Immigration Law Theory

To build the theoretical system of international migration and deepen the understanding of international migrants themselves and the social issues involved, scholars have conducted extensive research into the reasons and social impacts of international migration from various theoretical angles, such as push-pull theory,¹³⁷ neoclassical economics theory,¹³⁸ new economics migration theory,¹³⁹ labour market segmentation theory,¹⁴⁰ and world-systems theory.¹⁴¹

Immigration law theories can be divided into the following theoretical orientations:

- *economic orientation*, which emphasises market decisions;
- *new institutionalism orientation*, which emphasises a political connotation;
- *the clash of civilisations*; and
- *globalisation and transnationalism orientation*, which emphasise the balance between countries in the international political area.

Looking at each of these in turn.

a) *Economic orientation*

Economic orientation theory is influential in the theories of international migration policy. Some migration scholars believe that it is market forces that largely determine immigration. This is the orthodoxy that dominated the migration academic community for a long time.¹⁴² Since the 1980s, neoliberal economists, who have had a major influence on policymakers, have repeatedly stressed that national policies must be subordinate to market forces and that national immigration law interventions that violate the immigration market will be

¹³⁷ Donald J Bogue, 'Principles of Demography' (1970) 35(2) *American Sociological Review* 412–13.

¹³⁸ Larry A Sjaastad, 'The Costs and Returns of Human Migration' (1962) 70(5) *Journal of Political Economy* 80–93; Michael P Todaro, 'Internal Migration and Urban Employment: Comment' (1986) 76(3) *The American Economic Review* 566–69.

¹³⁹ Oded Stark, *Altruism and Beyond an Economic Analysis of Transfers and Exchanges within Families and Groups* (Cambridge University Press, 1995); J Edward Taylor and Travis J Lybbert, *Essentials of Development Economics* (University of California Press, 2015).

¹⁴⁰ Peter Doeringer, 'Market Structure, Jobs, and Productivity: Observations from Jamaica' (1988) 16(4) *World Development* 465–482; Michael Piore, 'The Shifting Grounds for Immigration' (1986) 485 *The Annals of the American Academy of Political and Social Science* 23–33.

¹⁴¹ Immanuel Wallerstein, *Modern World-System I Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (University of California Press, 2011); Andre Frank, *World Accumulation 1492–1789* (Algora Publishing, 2007); Terence K Hopkins and Immanuel Wallerstein, 'Processes of the World-System' (1984) 62(4) *Social Forces* 1104–05.

¹⁴² Stephen Castles, 'The Factors That Make and Unmake Migration Policies' (2004) 3(38) *The International Migration Review* 852–84.

counterproductive.¹⁴³ Of the neoliberal economic theories, the Simon Principle proposed by Julian Simon has had the greatest influence. The Simon Principle assumes that the State will continue to welcome immigrants until the economic contribution of the immigrants is nearly zero.¹⁴⁴ Taking national economic needs into consideration has been a basic factor for the countries when formulating or revising immigration laws.

Using *economic orientation theory* to explore the impact of market forces on immigration laws can be further divided into two aspects: the rational choice of immigrants and the external operation of immigration flows.

- First, market forces are reflected in the economic rationality of immigrants and become important in the formulation of international migration laws. Migration can be seen as a business or a family business.¹⁴⁵ Immigration is a form of human investment with costs and benefits. When potential immigrants and their families decide to migrate or not based on costs and benefits, the impact of economic benefits is obvious. Douglas S Massey and Felipe Garcia Espana have built a theoretical model of immigration costs and benefits based on human capital theory.¹⁴⁶ According to them, six of the seven factors affecting the decision of potential immigrants depend on the role and impact of the market economy.¹⁴⁷
- Second, with the arrival of immigrants, the immigration business for profit-making has followed, which directly affects immigration laws. This is because when a government tries to control transnational migration, the global migration market will emerge and benefit from legal or illegal migration activities.¹⁴⁸ It is not feasible for the government to welcome the flow of goods, capital, and information while prohibiting the flow of population because when the external environment provides the possibility (and

¹⁴³ George J Borjas, 'Economic Theory and International Migration' (1989) 3(23) *International Migration Review* 457–85; Jonas Widgren and Philip Martin, 'Managing Migration: The Role of Economic Instrument' (2002) 5(40) *International Migration* 213–29.

¹⁴⁴ J L Simon, 'Immigrants, Taxes and Welfare in the United States' (1984) 1(10) *Population and Development Review* 55–69.

¹⁴⁵ John Salt and Jeremy Stein, 'Migration as a Business: The Case of Trafficking' (1997) 4(35) *International Migration* 467–94; Emma Herman, 'Migration as a Family business: The Role of Personal Networks in the Mobility Phase of Migration' (2006) 4(44) *International Migration* 191–230.

¹⁴⁶ Douglas S Massey and Felipe Garcia Espana, 'The Social Process of International Migration' (1987) 237 *Science* 733–38.

¹⁴⁷ Ibid.

¹⁴⁸ Stephen Castles, 'International Migration at the Beginning of the Twenty-first Century: Global Trends and Issues' (2018) 68 *International Social Science Journal* 151–62.

convenience) of the cross-border movement of people, any prohibition law will only induce illegal industries.¹⁴⁹ Once the migration business emerges, the migration activities will continue due to its own interests. The migration business often makes the government's efforts to control or stop immigrants fail.¹⁵⁰

b) New institutionalism

Some scholars have severely criticised the theory of market forces because there are no more factors that can influence the flow and scale of immigration than policies.¹⁵¹ Some scholars have pointed out that the determinants of immigration laws are politics, not economic interests.¹⁵² New institutionalism states that for an immigration law to be established and implemented, it must first have reasonability—that is, it must conform to the national interest.¹⁵³ This is the biggest difference from economic orientation theory.

c) Clash of civilisations

Of the political theories that influence immigration law, the clash of civilisations proposed by Samuel Huntington is the most influential.¹⁵⁴ The cross-border movement of people puts civilisational differences in the same region. Some scholars have pointed out that the large-scale migration of different ethnic groups, different religious beliefs, and different language cultures has changed and will continue to change the meaning of some concepts, such as nationality and multi-culture, which may further affect the changed social relationships caused by globalisation.¹⁵⁵

When it comes to national security and international security, there is frequent mistrust and disapproval of immigrants.¹⁵⁶ Some scholars have suggested that large numbers of immigrants

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Joaquin Arango, 'Explaining Migration: A Critical View' (2018) 68 *International Social Science Journal* 105–17.

¹⁵² Simon Hix and Abdul Noury, 'Politics, Not Economic Interests: Determinants of Migration Policies in the European Union' (2007) 1(41) *International Migration Review* 182–205.

¹⁵³ James F Hollifield, 'The Politics of International Migration: How Can We "Bring the State Back In"?', in Caroline B Brettell and James F Hollifield (eds), *Migration Theory: Talking Across Disciplines* (Routledge, 2000).

¹⁵⁴ Samuel Phillips Huntington, *The Clash of Civilizations and the Remaking of World Order* (Simon & Schuster, 2002).

¹⁵⁵ Wayne A Cornelius, Philip L Martin and James F Hollifield, *Controlling Immigration: A Global Perspective* (Stanford University Press, 1994).

¹⁵⁶ Hix and Noury (n152).

may take the jobs of their citizens, occupy their land, share their welfare, and even threaten their way of life.¹⁵⁷

Owing to China's large population, the impact of immigration on China is not as much as the impact of Muslims on Europe or Mexicans on the United States. However, the proportion of immigrants in a certain area of China is already large, and cultural conflicts do exist, such as in Guangdong Province.¹⁵⁸

d) Globalisation and transnationalism

International migration is an important part of globalisation, and it is only when it is seen as part of globalisation that people can understand the social impact. With the increasing relations between countries, international migration laws have become more internationally political.

Stephen Castles has pointed out that legislators in many countries have repeatedly made false estimates of the trends in international migration, which has led to the repeated failures of international migration laws. This is because the theoretical framework of their own countries constrains legislators, and they become accustomed to regarding immigrants as taps that their government can arbitrarily switch on and off.¹⁵⁹ However, the transnational flows of migrants formed in the context of globalisation are by no means controlled by a single country.¹⁶⁰

Influenced by transnationalism in the era of globalisation, international organisations such as the United Nations are increasingly involved in the formulation of international migration laws, because migration not only improves the destiny of individuals but also improves the destiny of all humankind. Therefore, although it is impossible to require or hope that any country will revise its laws for others, all countries can strive to achieve the best results of mutual benefit through discussion and exchange of views.¹⁶¹

¹⁵⁷ Myron Weiner, *Global Migration Crisis: Challenge to States and to Human Rights* (Harper Collins, 1995).

¹⁵⁸ More details are discussed in Chapter Three.

¹⁵⁹ Stephen Castles, 'The Factors That Make and Unmake Migration Policies' (2004) 3(38) *International Migration Review* 852–84; Stephen Castles, 'International Migration at the Beginning of the Twenty-first Century: Global Trends and Issues' (2018) 68 *International Social Science Journal* 151–62; Stephen Castles, 'Migration and Community Formation under Conditions of Globalization' (2002) 4(36) *International Migration Review* 1143–68; Stephen Castles, 'Guestworkers in Europe: A Resurrection?' (2006) 4(40) *International Migration Review* 741–66.

¹⁶⁰ Stephen Castles, 'Migration and Community Formation under Conditions of Globalization' (2002) 4(36) *International Migration Review* 1143–68; Stephen Castles, 'Guestworkers in Europe: A Resurrection?' (2006) 4(40) *International Migration Review* 741–66.

¹⁶¹ Kofi Annan, 'In Praise of Migration' (5 June 2006).

The above is a brief introduction to the main theories of immigration law. Other factors may also need to be considered, such as population, public health, and ethnic identity. However, no single theory can fully explain immigration policy. As Alejandro Portes put it, ‘Do not expect a grand theory to explain every problem of immigration at every level. Such a theory will only be empty talk’. On the contrary, he believes that it is advisable to explain a particular problem through specific historical or empirical research.¹⁶² In other words, we should abandon a narrow and single theory. It is important to have a multifaceted vision and combine the political, economic, social, and cultural interactions and developments to explore the issue of immigration in depth.¹⁶³ That is to say, the stakeholders in the field of immigration law should at least include Chinese industries, Chinese citizens, immigrants to China, and the country itself. When conducting international cooperation, stakeholders should include China and the receiving countries.¹⁶⁴

B Enforcement Models

Richard Elmore sorted out four organisational models from histology and used them to observe the implementation process. The four organisational models were the institutional management model, the bureaucratic process model, the organisational development model, and the conflict negotiation model.¹⁶⁵ He discusses each model in the same way—that is, he discusses the four factors that are at the core of each model: first, the central principle of the model; second, the position of the model on the distribution of organisational power; third, the position of the model on organisational decision-making; and fourth, the implementation process based on the model.

1 The institutional management model

- a) Organisations should maximise the value of rationality—that is, the tasks performed by the organisation must accurately reflect organisational goals.
- b) The organisation should be structured according to the principle of hierarchical control. The responsibility for making decisions and completing the overall task of the organisation

¹⁶² Alejandro Portes, ‘Immigration Theory for a New Century: Some Problems and Opportunities’ (1997) 4(31) *International Migration Review* 799–825.

¹⁶³ Stephen Castles, ‘The Factors that Make and Unmake Migration Policies’ (2004) 3(38) *International Migration Review* 852–84

¹⁶⁴ More details are discussed in Chapter Five.

¹⁶⁵ Richard F Elmore, ‘Organizational Models of Social Program Implementation’ (1987) 2(26) *Public Policy* 185–228.

lies with top management. Top management assigns specific tasks and objectives to subordinate units and controls their performance.

- c) Among the tasks performed by the organisation, there is an optimal distribution of responsibility among the subordinate units. An organisation makes decisions by discovering and maintaining these optimal conditions.
- d) Implementation is composed of the following activities: defining specific targets that correctly reflect the objectives of the law; assigning to subordinate units the business standards and responsibilities that meet these objectives; controlling the organisation's overall performance; and making the subordinate units adapt to each other to achieve the organisational goal.¹⁶⁶

This model states that the organisation is a system that focuses on common goals and solves problems by subordinate units coordinating with each other. From this view, the following four necessary elements can be concluded: first, specific and clear tasks and objectives that accurately reflect the intentions of law; second, a plan to assign tasks and outcome standards to subordinate units; third, objective means to evaluate the performance of subordinate units; and fourth, the management system and social sanctions that enable the subordinate units to take responsibility for their tasks.

2 The bureaucratic process model

- a) The two core elements of an organisation are discretion and convention. Namely, we can explain the main behaviour of an organisation by the discretionary power that the members of the organisation will inevitably enjoy in the business, and the customary business process they develop to maintain their position in the organisation.
- b) Discretion and customary process are core elements of the organisation, which means that organisational power spreads among relatively independent subordinate units. With the complexity of the organisation and the increasing specialisation of its subordinate units, the control of one unit in the organisation by another unit is gradually restricted.
- c) Decision-making consists of controlling the discretion and changing the routine.
- d) Implementation consists of identifying where discretion concentrates and what kind of conventions should change, reforming the convention to reflect the intention of the law, and guiding the members of the organisation and subordinate units to accept these.¹⁶⁷

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

According to the bureaucratic process model, there are two central tasks: controlling the discretion and exploring the schemes that control it and discovering how to align the original routine process with the objectives of the law. The most difficult part is the grassroots bureaucracy. Grassroots bureaucrats have considerable discretion, but high-level bureaucrats have difficulty controlling it.¹⁶⁸

3 The organisational development model

- a) The organisation must operate to meet the basic psychological and social needs of each member.
- b) The organisation should enable all members of the organisation to have autonomy and control so that they can commit to the organisation's goals.
- c) Effective decision-making by the organisation depends on creating an efficient workgroup. Since the quality of decision-making depends on the quality of interpersonal relationships, decisions mainly consist of consensus through the mutual communication of the group members and the creation of close interpersonal relationships.
- d) The implementation process is the process of creating mutual adaptation and agreement between decision-makers and implementers.¹⁶⁹

The organisational development model advocates that everyone has the greatest control over what he/she does, and everyone provides incentives to maximise his/her commitment to organisational goals, in which case organisation members can do their best to complete their jobs. If the subordinate executives do not support the law, it will be difficult to proceed smoothly. In this sense, the implementation process begins at the lower level of the organisation.

4 The conflict negotiation model

- (a) An organisation is a place of conflict where individuals and subordinate units with different interests compete with each other.
- (b) The distribution of power in an organisation is not stable because the interaction between individuals or subordinate units is constantly changing.

¹⁶⁸ Kevin J O'Brien and Lianjiang Li, 'Selective Policy Implementation in Rural China' (2017) 4 *Critical Readings on the Communist Party of China* 437–60.

¹⁶⁹ Elmore (n165).

- (c) Decisions are made through negotiations between subordinate units. The decision through negotiation is the result of convergence between actors with different preferences and resources.
- (d) The implementation, which reflects the resources and preferences of the participants, consists of a series of complex negotiations.¹⁷⁰

It can be concluded that the implementation activities are not the choices that participants make to resolve problems but the outcome of conflicts and negotiations between participants with multiple interests and different influences. Clearly, stakeholder theory is not only applicable to formulating policies and laws, but it is also involved in the implementation process. Different implementers have different interest considerations, so the outcome of implementing the same policy or law can be quite different.

5 Summary

In practice, the four models should not be separated. On the contrary, they complement each other. First, the institutional management model should be the priority because it is not only what China needs now but is also in line with China's traditional organisational model. It can be considered as a basic frame. Then the bureaucratic process model, the organisational development model, and the conflict negotiation model should be considered. That is to say, first, the high-level government organisation sets up specific and clear tasks and objectives that accurately reflect the intentions of law; second, it draws up a plan to assign tasks and outcome standards to subordinate units; third, it uses objective means to evaluate the performance of subordinate units; and fourth, it uses the management system and social sanctions to enable the subordinate units to be responsible for their tasks. This is the basic frame. At the same time, the following conditions should be satisfied: first, the subordinate units still have discretion; second, their routine will not be changed drastically; third, grassroots management is strengthened in some ways; fourth, incentives are provided to maximise every member's commitment to organisational goals; and lastly, when there is a conflict, negotiation occurs. At this time, the stakeholder theory can be used again. That is, consensus should be reached on the premise of balancing the interests of all participants.

¹⁷⁰ Ibid.

IV CONCLUSION

This chapter has established a theoretical framework that will run throughout the full thesis. The thesis studies the issue of illegal economic immigration in China from the perspective of law and policy. Therefore, this chapter first analysed what is the law, what is policy, and the relationship between law and policy. Policy guides the formulation of laws, and the purpose of the law is to implement policies. In terms of policy, this thesis applies policymaking theory. At the core of policymaking theory is this: when making policies, politics, the economy, personal interests, and national interests should all be considered.

In terms of the law, it can be divided into legislation and implementation. Concerning legislation, this thesis applies stakeholder theory and immigration law theory. When formulating legal provisions, legislators need to consider the interests of various stakeholders. In this way, the law can be more stable and acceptable. However, there are different stakeholders in different situations. Therefore, immigration law theory needs to be analysed to decide who are the stakeholders when formulating immigration legal provisions. Concerning implementation, an organisational model is needed in current China.¹⁷¹ The institutional management model should be the priority. That is, first, the high-level government organisation sets up specific and clear tasks and objectives; second, it assigns tasks to subordinate units; third, it evaluates the performance of subordinate units; and fourth, the management system and social sanctions are used to encourage staff to take responsibility. At the same time, the bureaucratic process model, the organisational development model, and the conflict negotiation model should also be considered.

¹⁷¹ More details are discussed in Chapter Three.

CHAPTER THREE: ILLEGAL ECONOMIC IMMIGRATION IN CHINA—THE CURRENT SITUATION

I INTRODUCTION

At present, with no uniform definition of the concept of ‘illegal immigration’, illegal immigrants are easily confused with refugees and smugglers. Moreover, illegal immigration has a unique meaning in the context of China. Therefore, it is necessary first to clarify the definition of illegal economic immigration in China and then, based on the definition, introduce the history and current situation of illegal economic immigration in China, including its characteristics and reasons. After that, the chapter will discuss China’s current regulatory framework for illegal economic immigration, including policy, legislation, and implementation, with reference to the interview findings. Finally, the chapter will assess the effectiveness of the current regulatory framework.

II DEFINITION

A Immigration

Both Australian and foreign academics and relevant international organisations have not yet reached consensus on the definition of immigration. Some scholars believe that there are no objective criteria, and everything depends on the national policies that respond to political and economic conditions and public attitudes.¹⁷²

The *Encyclopedia Americana* regards human migration as:

the permanent change of residence by an individual or group; it excludes such movements as nomadism, migrant labour, commuting, and tourism, all of which are transitory in nature.¹⁷³

The *Big Dictionary of Social Science* defines migration as the geographical or spatial movement of a population from its place of origin to its destination, resulting in a change in residence, which is permanent.¹⁷⁴

¹⁷² Stephen Castles, ‘International Migration at the Beginning of the Twenty-first Century: Global Trends and Issues’ (2018) 68(227–228) *International Social Science Journal* 151–62.

¹⁷³ *Encyclopedia Americana* (6th ed, 2019).

¹⁷⁴ *社会科学大辞典* [*Big Dictionary of Social Science*] (Taiwan Business Press, 1973).

The *China Encyclopedia* (Sociology volume) defines migration (移民) in this way:

... population migration is the movement of people leaving their original place of residence, exceeding a certain administrative limit, to live in another place. The people who immigrate to a destination place are called immigrants.¹⁷⁵

The *Dictionary of Applied Chinese* has a more distinctive definition for migration (移民):

- (1) [verb] to move to another place or a foreign country; (2) [noun] a person who has immigrated to another place or a foreign country for settlement.¹⁷⁶

Therefore, migration includes international migration and domestic migration, and the act of migration and the person who migrates.

There are definitions of migration by international organisations. The IOM defines international migration as:

The movement of persons away from their place of usual residence and across an international border to a country of which they are not nationals.¹⁷⁷

The Human Rights Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO) explains that international migration not only refers to the people who live in a country that is not their country of birth, and have important social relations within the country, but also includes the following three conditions of migration: (1) people who leave the original nationality country and are in the territory of other countries; (2) people who do not enjoy the legal status of the country of destination (such as being granted refugee status, naturalisation of aliens, or other similar status); and (3) people who cannot enjoy basic legal protection based on diplomatic agreements, visas or other agreements.¹⁷⁸ The UN Migration Agency defines a migrant as:

... any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.¹⁷⁹

¹⁷⁵ 中国大百科全书 [China Encyclopedia] (China Encyclopedia Press, 1991).

¹⁷⁶ 应用汉语词典 [Dictionary of Applied Chinese] (Business Press, 2008).

¹⁷⁷ IOM, 'Key Migration Terms' (Web Page) <<https://www.iom.int/key-migration-terms#International-migration>>.

¹⁷⁸ UNESCO, (Web Page) <<http://portal.unesco.org/she/en/ev.php>>. See 郝鲁怡 [Hao Luyi], 欧盟国际移民法律制度研究 [Research on EU International Migration Legal System] (People's Publishing House, 2011) 10.

¹⁷⁹ UN, 'Migration' (Web Page) <<https://www.un.org/en/sections/issues-depth/migration/index.html>>.

Scholars have their own definitions of immigration or immigrants. Stephen Castles believes that an immigrant is someone who transcends the boundaries of a political or administrative limit and has settled at least temporarily.¹⁸⁰ The well-known immigration experts Tomas Hammar and Grete Brochman state that migrants refer to people who have migrated to a foreign country and settled there for a certain period (three months). The entry or exit of migrants is a movement of people across national borders. A person who moves to another country and stays in that country for more than, say, three months is an immigrant for the receiving country, and for the country of origin (country of birth), they are emigrants who have moved to another country.¹⁸¹

Chinese scholars clearly distinguish between domestic migration and international migration, but they have different views on the definition of international migration. Representative views are:

- Qianjin Wu believes that international migration does not cover domestic population movement from a village to a city. It is also different from the movement of refugees. It belongs to an international population movement across borders and comes from the free will of individuals and groups without government coercion.¹⁸²
- Li Weng believes that international migration is a social phenomenon that accompanies the emergence of a country. It refers to the entry-and-exit activity of citizens of a country who reside in the country of destination for a long or short period under the laws of the sending country and the receiving country, as well as relevant international treaties and international practices.¹⁸³
- Luyi Hao believes international migration refers to voluntary or involuntary migration where people stay in a country other than their country of origin or country of birth for a certain period.¹⁸⁴

¹⁸⁰ Castles (n172).

¹⁸¹ Tomas Hammar, *European Immigration Policy – A Comparative Study* (Cambridge University Press, 1985) 11. Grete Brochman, *the Mechanism of Control* (Berg Press, 1999) 7.

¹⁸² 吴前进 [Wu Qianjin], 《当代国际移民概念及其全球化特征》 [The Concept of Contemporary International Migration and Its Globalisation Characteristics] (2004) 8 现代国际关系 *Contemporary International Relations* 18–24.

¹⁸³ 翁里 [Weng Li], *国际移民法理论与实践* [Theory and Practice of International Migration Law] (Law Press, 2001) 20.

¹⁸⁴ 郝鲁怡 [Hao Luyi], *欧盟国际移民法律制度研究* [Research on EU International Migration Legal System] (People's Publishing House, 2011) 11, 12.

Immigration has two aspects: subject and behaviour. Immigration subject generally refers to foreigners with foreign nationality who have moved across national borders from other countries of their nationality or country of birth. This thesis excludes domestic immigrants and only refers to international immigration that crosses national borders. Moreover, it studies one-way international immigration. It does not consider the emigration of Chinese to other countries. It only studies the immigration of foreigners (people without Chinese nationality, including stateless people) to China. Besides, this study is limited to mainland China. Considering the special status of the Hong Kong Special Administrative Region, the Macao Special Administrative Region, and the relatively independent administrative status of Taiwan, immigration from these three places will not be discussed. From a subjective angle, immigrants must have the willingness to enter China; from an objective angle, immigrants must have entered China.

B Illegal Immigration

Immigration can be divided into different types according to different criteria:

- domestic immigration and international immigration according to whether national borders are crossed;
- legal immigration and illegal immigration according to the legality;
- individual immigration, group immigration, and large-scale immigration according to the scale;
- short-term immigration, medium-term immigration, and permanent immigration according to the length of time;
- living immigration and development immigration according to the motivation.¹⁸⁵

These divisions can be applied to research based on different perspectives. The focus of this section is on how to distinguish between legal immigration and illegal immigration.

Legal immigration is based on the relevant national laws, international treaties, or international practices. People immigrate from the country of nationality or country of birth to the country of destination for long-term or short-term residence, including employment immigration (or labour immigration), investment immigration, and family reunification immigration.

¹⁸⁵ 徐军华 [Xu Junhua], 《非法移民的法律控制问题研究》 [‘Research on Legal Control of Illegal Immigrants’] (PhD Thesis, 武汉大学 [Wuhan University], 2005) 6.

What is illegal immigration? The IOM defines an illegal (irregular) migrant as:

An alien who enters the country at the wrong time or place, eludes an examination by officials, obtains entry by fraud, or enters into a sham marriage to evade immigration laws. This would include among others, one who has no legal documentation to enter a country but manages to enter clandestinely; who enters using fraudulent documentation; who, after entering using legal documentation, has stayed beyond the time authorised or otherwise violated the term of entry and remained without authorisation.¹⁸⁶

Convention No. 143 adopted by the 1975 ILO Conference defines clandestine or illegal migration movements as those where migrants find themselves:

... during their journey, on arrival or during their period of residence and employment [in] conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations.¹⁸⁷

The Organisation for European Co-operation and Development (OECD) notes that ‘the spectrum is very wide’ when it comes to defining illegal immigration:

For apart from those who enter countries illegally, many migrants enter countries illegally, many migrants enter a country quite legally but overstay their visas or fail to get their permits renewed. Also in this group are the seasonal workers who fail to return home when their contracts expire and rejected asylum seekers.¹⁸⁸

In this thesis, illegal immigrants are described in terms of the ‘three-non’ foreigners—namely, foreigners who enter China without a valid visa or any other valid entry document (illegal entry),¹⁸⁹ foreigners who remain in China after expiry of their visas or residence permits (illegal residence),¹⁹⁰ and foreigners who work in China without a work permit or beyond the scope of

¹⁸⁶ IOM, ‘Irregular Migration and Smuggling of Migrants from America’ (Web Page) <<https://publications.iom.int/books/irregular-migration-and-smuggling-migrants-armenia>>.

¹⁸⁷ Yann Moulier-Boutang and Jean-Pierre Garson, ‘Major Obstacles to Control of Irregular Migrations: Prerequisites to Policy’ (1984) 18(3) *The International Migration Review* 579–92.

¹⁸⁸ OECD, ‘Illegal Immigrants and the Labour Market’ (Web Page) <https://oecdobserver.org/news/archivestory.php/aid/190/Illegal_immigrants_and_the_labour_market.html>.

¹⁸⁹ 宋培培 [Song Peipei], 《外国人非法入境、非法居留、非法就业问题的法律分析》 [‘Legal Analysis of Illegal Entry, Illegal Residence and Illegal Employment of Foreigners’] (辽宁师范大学 [Liaoning Normal University], 2014).

¹⁹⁰ 《中华人民共和国外国人入境出境管理条例》 [*Regulation on the Entry and Exit of Foreigners of the People’s Republic of China*] (PRC) State Council, Order No 637, 12 July 2013, art 25.

the work permit, or foreign students who work in China beyond the scope or time of Work-Study Management Measures (illegal employment).¹⁹¹

In this study, it is not necessary to specify a time limit for the definition of illegal immigration, such as three months or six months. It is more important to specify different processing methods for different situations. For example, for people who have entered China illegally and been found at the time of entry, they should be required to return home and apply for the necessary visas to enter China legally; if they have been illegally staying in China for a period, they should be dealt with differently depending on the circumstances, including the length of time, the purpose of coming to China, and whether they are conducting other illegal activities or crimes. The time limit is only one of the considerations, so setting a time limit is not that important.

Strictly speaking, illegal immigrants cannot be equated with ‘three-non’ foreigners. However, this thesis defines illegal immigrants thus for the following four reasons:

1. There is no international consensus on the definition of illegal immigration. China does not currently have the concept of illegal immigration or illegal immigrants, but it has the definition of ‘three-non’ foreigners. In the *Entry-and-Exit Administration Law of the People’s Republic of China*, the expression ‘illegal entry, illegal residence, and illegal employment’ is formally used.¹⁹²

¹⁹¹ 《中华人民共和国出境入境管理法》 [*Entry-and-Exit Administration Law of the People’s Republic of China*] (PRC) Standing Committee of the National People’s Congress, 30 June 2012, art 43. 《教育部 财政部关于印发高等学校勤工助学管理办法（2018 年修订）的通知》 [Notice of Ministry of Education and Ministry of Finance on Colleges and Universities Work-Study Management Measures] Ministry of Education and Ministry of Finance, 20 August 2018, art 29.

¹⁹² Article 71: Persons who commit any of the following acts shall be fined not less than RMB 1,000 yuan but not more than RMB 5,000 yuan; where circumstances are serious, such persons shall be detained for not less than five days but not more 10 days and may also be fined not less than RMB 2,000 yuan but not more than RMB 10,000 yuan. (1) Exit or enter China with forged, altered or fraudulently obtained exit/entry documents; (2) Exit or enter China using others’ exit/entry documents; (3) Evade exit/entry border inspection; or (4) Illegally exit or enter China in any other way. Article 78: Foreigners who reside in China illegally shall be given a warning; where circumstances are serious, they shall be imposed with a fine of RMB 500 yuan per day, with a cap of RMB 10,000 yuan in total or be detained for not less than five days but not more than 15 days. Article 80: Foreigners who work in China illegally shall be fined not less than RMB 5,000 but not more than RMB 20,000 yuan; where circumstances are serious, they shall be detained for not less than five days but not more than 15 days and shall also be fined not less than RMB 5,000 yuan but not more than RMB 20,000 yuan. See 《中华人民共和国出境入境管理法》 [*Entry-and-Exit Administration Law of the People’s Republic of China*] (PRC) Standing Committee of the National People’s Congress, 30 June 2012.

2. The interviews revealed that the enforcing agencies are familiar with the concept of ‘three-non’ foreigners but not so much with the concept of illegal immigrants, and even less with the relationship between ‘three-non’ foreigners and illegal immigrants.¹⁹³
3. Third, the crucial difference between the concept of ‘three-non’ foreigners and illegal immigrants is probably the time limit but, as mentioned before, time limit is not that important, so this study defines ‘three-non’ foreigners as illegal immigrants.
4. Last, the identification of a ‘three-non’ foreigner is relatively easy. Foreigners who have committed any one or more of the three acts of illegal entry, illegal residence, or illegal employment can be regarded as ‘three-non’ foreigners. People who commit illegal entry activity are easily identified as ‘three-non’ foreigners, and once a foreigner enters illegally, his or her residence and employment after entry will be illegal. In practice, there are also cases of legal entry but illegal residence; legal entry but illegal residence and illegal employment; and legal entry and legal residence but illegal employment.

C Distinction Between Illegal Immigrants and Related Concepts

1 Illegal Immigrants and Refugees

Some scholars believe that refugees are subject to forced migration—that is, they are forced to leave their home countries and emigrate to other countries.¹⁹⁴ Based on this definition, the biggest difference between illegal immigrants and refugees is subjectivity. However, subjectivity is difficult to judge in practice. Therefore, refugees should be identified under the relevant international conventions.

The *Convention Relating to the Status of Refugees* was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from 2 to 25 July 1951. For the first time, the definition and scope of refugees in the form of international conventions was made clear. Article 1 of the Convention defines a refugee as someone who:

As a result of events occurring before 1 January 1951 and owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality

¹⁹³ This information was given by the interviewee L from the public security bureau on 9 April 2019.

¹⁹⁴ 郝鲁怡 [Hao Luyi] (n184); 梁西 [Liang Xi], *国际法 (修订第二版)* [*International Law (Revised Second Edition)*] (Wuhan University Press, 2000); James C Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, 2005).

and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁹⁵

With the passage of time and the emergence of new refugee situations, the need was increasingly felt to make the provisions of the 1951 Convention applicable to such new refugees. As a result, the *Protocol Relating to the Status of Refugees* was prepared and entered into force on 4 October 1967. Under the Protocol, the United Nations High Commissioner for Refugees (UNHCR) is called upon to provide international protection to refugees falling within its competence. The Protocol defined a refugee to be any person within the 1951 Convention definition as if the words ‘As a result of events occurring before 1 January 1951 and ...’ were omitted.¹⁹⁶ It can be seen that a person must meet three conditions to obtain refugee status: first, living outside his/her country or country of habitual residence; second, being unable or unwilling to be protected by his/her country or being unable or unwilling to return to his/her country of residence; third, having legitimate reasons to fear persecution. The fear of persecution refers to an individual’s mental or psychological fear of violation or persecution.¹⁹⁷ Fear of persecution does not require individuals to be subjected to actual persecution. Rather, it requires that the existence of a persecution situation makes it possible for people to suffer and it is not an illusion or fiction.¹⁹⁸ The Convention Relating to the Status of Refugees uses subjective fear of persecution as the basic condition for individuals to obtain refugee status. At the same time, it requires that this fear not be hypothetical or fictional and should be supported by objective facts and legitimate reasons, reflecting the combination of subjective factors and objective factors.¹⁹⁹ However, the definition of a refugee does not require the alleged persecution to have reached a certain level or have happened. As long as there are legitimate reasons to fear persecution, even if the persecution has not yet occurred, a person may seek and obtain refugee status.²⁰⁰

¹⁹⁵ UNHCR, *Convention Relating to the Status of Refugees*, GA Res 429 (V), December 1950, art 1.

¹⁹⁶ UNHCR, *Protocol Relating to the Status of Refugees*, GA Res 2198 (XXI), 16 December 1967, art 1.

¹⁹⁷ Jose H Fischel De Andrade, ‘On the Development of the Concept of Persecution in International Refugee Law’ (2008) 2 *Brazilian Yearbook of International Law* 114–36.

¹⁹⁸ 梁淑英 [Liang Shuying], 《非法入境难民的处理原则》 [‘Principles to Deal with Illegal Entry Refugees’] (2008) 6 *法学杂志 Law Journal* 2–5.

¹⁹⁹ 王铁崖 [Wang Tieya], *国际法 [International Law]* (Law Press, 1995) 89–90.

²⁰⁰ Ibid.

China declared its accession to the *Convention Relating to the Status of Refugees* and the *Protocol Relating to the Status of Refugees* in 1982. In determining the definition of refugees, China implemented the standards set by the 1951 *Convention Relating to the Status of Refugees*. However, since China has no corresponding domestic laws and regulations, there are still some deficiencies in the identification and management of refugees. (This issue will be discussed later in this chapter.)

Although the definitions of illegal immigrants and refugees are quite different (that is, the theoretical differences between illegal immigrants and refugees are obvious), it is difficult to distinguish them in practice. In addition to the difficulties in distinguishing refugees from illegal immigrants based on the subjective aspects of immigration, there is a possibility of mutual conversion between them under certain conditions. For example, when illegal immigrants enter the destination country, some may submit false asylum applications to the host country for refugee status. If the application is successful, an illegal immigrant will be transformed into a refugee. If the false reason for the application is found and the application is rejected, he/she remains an illegal immigrant. Moreover, from the angle of entry methods, refugees generally enter the country illegally. Until their refugee status is confirmed, they have been in the state of illegal entry and illegal residence, so they should be called illegal immigrants.

In short, in addition to conceptual differences between illegal immigrants and refugees, there are three more differences:

1. Different legal basis: There are international conventions for the identification of refugees—namely, the 1951 *Convention Relating to the Status of Refugees* and the 1967 *Protocol Relating to the Status of Refugees*. Refugees are recognised by international conventions, but there is no relevant international convention or international standard for the identification of illegal immigrants. It can only be determined according to the immigration laws or other relevant domestic laws and regulations of the destination countries.
2. Different legal status: Illegal immigrants are illegal, and countries take precautions against them. This means, apart from basic human rights, illegal immigrants are not protected by the laws of the host country in terms of social welfare and work benefits. Compared with illegal immigrants, refugees are protected by international law.

3. Different treatment: Refugees themselves and their families can enjoy the rights and treatments granted by the contracting host country under the international conventions mentioned above, especially the right of non-refoulement. However, illegal immigrants do not have this right and will generally be repatriated to the country of origin or nationality.

2 *Illegal Immigration and Smuggling of Migrants and Human Trafficking*

Before discussing smuggling, stowaways need to be mentioned. The *International Convention Relating to Stowaways* defines a stowaway as:

... a person who, at any port or place in the vicinity thereof, secretes himself in a ship without the consent of the shipowner or the Master or any other person in charge of the ship and who is on board after the ship has left that port or place.²⁰¹

However, this definition is limited to people who have entered from sea and does not include people who have entered from land and air by vehicle or aeroplane, so it is not comprehensive.

The activity conducted by individual stowaways is already a criminal act in the laws of various countries and the conventions of international organisations, and it is regulated by domestic and international criminal laws. However, due to the gradually stricter management of borders by various countries, it is more difficult to become a stowaway.²⁰² Individual stowaway activities have gradually evolved into organised activities. It is no longer an individual illegal act of illegal immigrants but is integrated with organised gang crimes and organised transnational crime.²⁰³ In international treaties, the related concepts include smuggling of migrants and human trafficking. Article 3(a) and (b) of the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, which supplements the *Convention against Transnational Organized Crime*, states:

(a) “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

²⁰¹ UNHCR, *International Convention Relating to Stowaways*, 10 October 1957, art 1.

²⁰² It should be noted that China’s situation is different because there are many paths between the border areas of China and neighbouring countries.

²⁰³ 但伟 [Dan Wei] (n108).

(b) “Illegal entry” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State.²⁰⁴

Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* details the concept of human trafficking. The Protocol, which supplements the *United Nations Convention against Transnational Organized Crime*, states:

- (a) “Trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (such as the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs);
- (b) The consent of a victim of trafficking in persons to the intended exploitation is irrelevant;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article; and
- (d) “Child” shall mean any person under eighteen years of age.²⁰⁵

There are differences and connections between smuggling of migrants and human trafficking.²⁰⁶ The differences are these. In the smuggling of migrants, illegal migrants voluntarily pay the smuggling costs to international smuggling organisations, knowingly take advantage of the various resources provided by transnational criminal organisations, and willingly place themselves at various risks in the process of illegally crossing the borders of countries, including the risks of life and property during the smuggling process, as well as the potential for arrest and repatriation due to unsuccessful smuggling.²⁰⁷ Trafficked persons are

²⁰⁴ UN, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the Convention against Transnational Organized Crime*, GA Res 54/212, 22 December 1999, art 3.

²⁰⁵ UN, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, GA Res 55/25, 15 November 2000, art 3.

²⁰⁶ IOM, *Irregular Migration and Smuggling of Migrants from America* (January 2002) 8.

²⁰⁷ Alexis A Aronowitz, ‘Smuggling and Trafficking in Human Beings: The Phenomenon, the Markets that Drive It and the Organisations That Promote It’ (2001) 9 *European Journal on Criminal Policy and Research* 163–95.

the victims of transnational criminal groups. They often passively become people who illegally cross the borders due to violence or threat of violence or through any other form of coercion. On the other hand, there is a close relationship between smuggling of migrants and human trafficking. Once illegal immigrants are controlled by transnational criminal organisations that smuggle immigrants, they may be in a situation of being trafficked, especially when illegal immigrants cannot repay the smuggling costs on time after arriving in the destination country. In practice, illegal migrants are often exploited, forced to work, or even killed during the smuggling process. More seriously, as noted in (b) and (c) of the Protocol's definition of human trafficking, the distinction between smuggling of migrants and human trafficking is difficult to make. Given that human trafficking is another serious type of transnational crime, this thesis will not discuss it.

Therefore, smuggling includes individual activities of illegal exit and entry of borders and transnational organised crimes of smuggling migrants. The formation of illegal entry directly relates to it.

D Illegal Economic Immigration

There are many types of illegal immigrants, the main types being illegal immigrants for economic reasons (illegal economic immigrants), illegal immigrants for family reasons, and illegal immigrants for fleeing justice. This study focuses only on illegal economic immigrants—those who have entered China without valid visas or overstayed in China or are working illegally in China for economic reasons. Working illegally in China refers to those working without valid visas or work permits, those working beyond the scope of their work permits, those working beyond the scope or duration of Work-Study Management Measures, and those working after expiry of their work permits. Of course, there are intersections between these different types. For example, some people enter China illegally and work in China illegally but then marry Chinese citizens or refugees and have children.²⁰⁸ In this situation, it is difficult to tell whether they are illegal economic immigrants or illegal immigrants for family reasons.

²⁰⁸ 罗刚 [Luo Gang] (n29) 119.

III HISTORY

The issue of illegal immigration in China and China's management of immigrants has existed since ancient times.²⁰⁹ The record of immigration management can be traced back to the Han Dynasty (202–220 BC).²¹⁰ The *Records of the Historian* tell us that China's earliest entry-and-exit management system existed in the Han Dynasty.²¹¹ In the Tang Dynasty (618–907), the government made the entry-and-exit management system more stringent and gradually formed a corresponding system, which involved putting people through a qualification examination before they entered or left the territory, adding border inspection, and cracking down on violations of the law.²¹² In the late Qing period (1840–1912), there were special entry-and-exit administrative institutions, such as a negotiation institute.²¹³ Further developments occurred in the period of the Republic of China (1912–1949). Based on the heritage of the passport and visa system from the Qing Dynasty, the relevant legal provisions, the issuing authority, the type of visa, and other systems were refined and improved.²¹⁴

However, after the founding of the People's Republic of China in 1949, the development of entry-and-exit management encountered several difficulties.²¹⁵ Before the reform and opening-

²⁰⁹ 司马迁 [Sima Qian], *史记* [Records of the Historian] (Han Dynasty).

²¹⁰ 明越 [Ming Yue], 《我国出入境管理法制化基本问题研究》 [Study on the Basic Problems of Entry-and-Exit Administration Legalization in China] (2014) 11 法制博览 *Legality Vision* 271–72.

²¹¹ At that time, the court not only had to consider national security but also the efficiency of checking people's entry and exit, business travellers, messengers, and other groups, so they enacted relevant laws and regulations on the entry and exit of document management and restraint. Government officers and citizens had to hold a special material-made object if they wanted to access the border, and the object had to match that in the hands of border checkers before they could proceed. See 明越 [Ming Yue], 《我国出入境管理法制化基本问题研究》 [Study on the Basic Problems of Entry-and-Exit Administration Legalization in China] (2014) 11 法制博览 *Legality Vision* 271–72.

²¹² 蔡春利 [Cai Chunli], 《唐代出入境边防检查制度研究》 [Study on Entry-and-Exit Border Inspection System in Tang Dynasty] (南开大学 [Nankai University], 2009).

²¹³ In this period, the entry-and-exit management of foreigners also had more clear and detailed management requirements. Foreigners living in China could only live in a treaty port, and they had to hold a licence for inspection if they wanted to go to any non-treaty ports. The license held by the foreigner was issued by the consular officer of each country, stamped by the corresponding place, and then the foreigner was escorted by military staff. This was the passport of the mainland. If there was a breach, the foreigner would be sent to the nearest consulate for punishment. See 罗超群 [Luo Chaoqun], ‘民国时期外人出入境管理初探’ [A Preliminary Study on the Administration of Entry and Exit for Foreigners in the Republic of China Period] (湖南师范大学 [Hunan Normal University], 2011).

²¹⁴ The government had issued all kinds of relevant provisions for foreigners coming to China, such as entry-and-exit inspection or passport handling. Foreigners' passports were issued by the Chinese consulate abroad. See 明越 [Ming Yue], 《我国出入境管理法制化基本问题研究》 [Study on the Basic Problems of Entry-and-Exit Administration Legalization in China] (2014) 11 法制博览 *Legality Vision* 271–72.

²¹⁵ 王浩宇 [Wang Haoyu], 《构建中国出境入境管理新体系的思考》 [‘Thinking on Building a New System of China's Entry-and-Exit Administration’] (四川大学 [Sichuan University], 2006).

up of the Chinese economy in 1978, the management of foreigners mainly accorded with the needs of the political situation at home and abroad. There was one relevant law, which was the 1964 *Ordinance of Foreigners' Entry, Exit, Transition, Living and Travel*. It had only 19 provisions, and Article 17 was about the punishment of those who violated the Ordinance.²¹⁶

After the reform and opening-up of the Chinese economy in 1978, the number of entry-and-exit personnel gradually increased accordingly, and illegal immigrants in China also went up.²¹⁷ On the one hand, the Chinese government increasingly relaxed policies for foreigners to invest, travel, study, live, and work in China; on the other hand, China's rapid economic development and abundant tourism resources also attracted more foreigners to China. Along with legal immigrants came many illegal immigrants. The *Ordinance of Foreigners' Entry, Exit, Transition, Living and Travel* was not enough to deal with the new situation. Therefore, after 1985, China introduced laws and regulations on the administration of entry and exit for Chinese citizens and foreigners. With this, China's entry-and-exit management entered a new stage of legal management, with all aspects coming under the supervision of the law.²¹⁸

Despite the introduction of new laws, illegal immigrants in China were still increasing, and the concept of 'three-non' foreigners emerged around 1990 (namely, illegal entry, illegal residence, and illegal employment of foreigners), which describes the illegal immigrants in this thesis. According to the statistics from 1995 to the end of 2000, Chinese police dealt with more than 85,000 foreigners of illegal entry, illegal residence, or illegal employment, 36,000 of whom were deported legally while more than 50,000 remained on the mainland.²¹⁹ From 2000 to

²¹⁶ Article 17: 'for the foreigners who violate the Ordinance, the local public security organs should give warnings, fines, detention, order to leave, expulsion and other penalties based on the severity, or legally investigated criminal responsibility. Foreigners who enjoy diplomatic exemption are dealt with through diplomatic channels if they violate the provisions of this Ordinance'. See 《外国人入境出境过境居留旅行管理条例》 [*Ordinance of Foreigners' Entry, Exit, Transition, Living and Travel*] State Council, 13 April 1964.

²¹⁷ 明越 [Ming Yue] (n210).

²¹⁸ The relevant laws include the *Law of the People's Republic of China on the Administration of Entry and Exit of Foreigners* in 1985 and the *Detailed Rules for the Implementation of the Law of the People's Republic of China on the Administration of the Entry and Exit of Foreigners* in 1986, which stipulates more detailed provisions on penalties for violation of the law. See 《中华人民共和国外国人入境出境管理法》 [*Law of the People's Republic of China on the Administration of Entry and Exit of Foreigners*] Standing Committee of the National People's Congress, 22 November 1985; 《中华人民共和国外国人入境出境管理法实施细则》 [*Detailed Rules for the Implementation of the Law of the People's Republic of China on the Administration of the Entry and Exit of Foreigners*] MPS and MFA, 27 December 1986.

²¹⁹ 《识别伪假证件国际研讨会在深圳召开》 ['International Symposium on Identifying Fake Documents Held in Shenzhen'] 网易 [NetEase] (Web Page, 26 November 2002) <http://edu.163.com/editor_2002/editor_training/021126/021126_88386.html>.

October 2002, China's entry-exit frontier inspection authorities ferreted out 1,669 smuggling cases of foreigners at the port. From 1 April to 1 July 2002 especially, Chinese police carried out a three-month nationwide joint action against illegal immigration and ferreted out 1,920 illegal immigrants.²²⁰ In 2006, the Chinese public security organs dealt with and repatriated 16,000 illegal immigrants.²²¹ In 2011, the Chinese public security organs dealt with more than 20,000 illegal immigrants.²²² As shown by the data, the number of illegal immigrants investigated and dealt with by the public security organs is increasing year by year. Moreover, there are also many illegal immigrants who have not been investigated or have re-entered illegally after being repatriated.²²³

To cope with this situation, the *Entry-and-Exit Administration Law of the People's Republic of China* was approved on 30 June 2012.²²⁴ Unfortunately, the introduction of the new law did not stop illegal immigrants. For example, according to the BBC, there were about 30,000 foreign workers in Dongguan City, Guangdong Province in 2015 and 5,000 cases of illegal foreign workers were found.²²⁵ Moreover, more than 3,000 foreigners who entered Guangdong Province illegally were found from January to March 2016.²²⁶

IV CURRENT SITUATION IN CHINA

A Number of Illegal Immigrants

The current number of illegal immigrants in China is more than 400,000, and there is a sustained growing trend at a rapid speed. Illegal immigrants gather mainly in the Pearl River Delta, the Yangtze River Delta, Beijing, and the northeast region.²²⁷ There are also illegal

²²⁰ Ibid.

²²¹ 林孙俊 [Sunjun Lin] (n12) 4.

²²² Guofu Liu, 'Tentative Study on the Legal Regulations on the Illegal Immigration' (Research Report, International Symposium on Immigration Management and Service of Customs Clearance, 2012).

²²³ 林孙俊 [Sunjun Lin] (n12) 4.

²²⁴ 《中华人民共和国出境入境管理法》 [*Entry-and-Exit Administration Law of the People's Republic of China*] (PRC) Standing Committee of the National People's Congress, 30 June 2012.

²²⁵ 'Chinese Factories Employ a Lot of Illegal Vietnamese Workers' (n16).

²²⁶ 《广东首季截获 3,000 外籍偷渡者》 ['3,000 Illegal Immigrants Were Found in Guangdong'] 观察者网 [Observer Network] (Web Page, 25 April 2016) <https://www.guancha.cn/FaZhi/2016_04_25_358064.shtml>.

²²⁷ 林孙俊 [Sunjun Lin] (n12) 50-51; 宋全成 [Song Quancheng], 《非法外国移民在中国的现状、症结与对策》 [Illegal Immigrants in China: The Present Situation, Crux and Countermeasures] (2015) 1 山东大学学报 (哲学社会科学版) *Journal of Shandong University (Philosophy and Social Sciences)* 55-63.

immigrants in border regions, such as Yunnan Province and Guangxi Province.²²⁸ These illegal immigrants come from different countries, usually Vietnam, Myanmar, Laos, or Cambodia.²²⁹

Among these illegal immigrants, there are many illegal economic immigrants. Illegal employment of foreigners in China can be roughly divided into the following types based on nationality and the industry involved:

- *Illegal economic immigrants from Southeast Asia.* This group can be further divided into two groups. First, those from the southwest of China, who share long borders with Laos, Vietnam, and Myanmar. The China–Myanmar borderline is 2,186 kilometres, and the China–Vietnam borderline is 1,347 kilometres.²³⁰ As these regions are densely populated and many ethnic groups are spread across the borders, the border people of the two countries have close relationships.²³¹ Inter-marriage, trade, and communication are frequent. The area is densely covered by mountains and rivers, and the terrain is extremely rough, which makes monitoring and management difficult.²³² According to the Port Office of the Yunnan Provincial Department of Commerce, as of 2011, there were as many as 90 commercial paths for border people and 103 border markets in the Yunnan Province alone.²³³

In recent years, China's southwest border areas have enjoyed rapid economic development and long-term political stability. Compared with China, however, the economic development of neighbouring countries continues to lag, and armed conflicts occur in some countries.²³⁴ Therefore, China is a major attraction to the people of neighbouring countries. In this context, many illegal economic immigrants have entered China. The number seized in the Yunnan Province in 2012 was as high as 17,546, and this number increases every

²²⁸ 罗刚 [Luo Gang] (n29); 戴宏军 [Dai Hongjun] and 韦福安 [Wei Fuan] (n97).

²²⁹ 罗刚 [Luo Gang] (n29) 68.

²³⁰ 林孙俊 [Sunjun Lin] (n12) 48.

²³¹ 宋全成 [Song Quancheng], 《非法外国移民在中国的现状、症结与对策》 [Illegal Immigrants in China: The Present Situation, Crux and Countermeasures] (2015) 1 山东大学学报（哲学社会科学版） *Journal of Shandong University (Philosophy and Social Sciences)* 55–63.

²³² 罗刚 [Luo Gang] (n29) 100.

²³³ 林孙俊 [Lin Sunjun] (n12) 48.

²³⁴ Ibid 48.

year.²³⁵ There are also illegal economic immigrants from Myanmar, Laos, and Cambodia, who work mainly in China's low-skilled factories in the Guangdong Province.²³⁶

These illegal economic immigrants from Southeast Asia come to China for two main reasons. One is for the purpose of intermarriage, which mainly manifests as female illegal immigrants entering China to find a husband and live the rest of their life in China. Due to the relatively imbalanced ratio of men and women in China (significantly more men than women),²³⁷ men living in poverty in some rural areas cannot find a wife among local women, but their economic level and living standards are higher than those of men living in neighbouring countries in Southeast Asia such as Vietnam and Myanmar.²³⁸ Therefore, many female illegal economic immigrants enter China through marriage, which not only improves their living standards but also obtains income for their families in their home countries.²³⁹

Moreover, because many rural areas still maintain the traditional custom of recognising de facto marriage, such unregistered marriages can be recognised without registration by the civil affairs department.²⁴⁰ According to media reports, there are more than 500 households in Mangbang Village of the Yunnan Province. Among these households, as many as 70 or 80 have married people of neighbouring countries, most of them illegal economic immigrants.²⁴¹ Also, such unregistered transnational marriages have further expanded from border areas such as the Yunnan Province and Guangxi Province to inland areas. Many cases have appeared in inland areas such as the Anhui Province, Jiangxi Province, and Henan Province.²⁴² More seriously, due to the huge economic benefits, many underground industrial chains are transnational illegal marriage intermediary agencies, and some even commit human-trafficking crimes.²⁴³

²³⁵ Ibid 48–49.

²³⁶ 'Chinese Factories Employ a Lot of Illegal Vietnamese Workers' (n16).

²³⁷ 罗刚 [Luo Gang] (n29) 99.

²³⁸ Ibid.

²³⁹ 林孙俊 [Lin Sunjun] (n12) 97.

²⁴⁰ Ibid 49.

²⁴¹ 李钢 [Li Gang], 《滇缅边民跨国婚姻调查：手续难办，大多有实无名》 ['Yunnan–Burmese People have Unnamed Transnational Marriages'] (Web Page, 14 December 2012) <http://news2.jschina.com.cn/system/2012/12/14/015564485_01.shtml>.

²⁴² 林孙俊 [Lin Sunjun] (n12) 49.

²⁴³ Ibid 49.

There are illegal economic immigrants who work in China illegally. These illegal immigrants are mainly males, and their purpose is to gain a higher income. For some Chinese enterprises and individual businesses, illegal economic immigrants have lower wage requirements and do not need to be paid for various social insurance schemes, which saves labour costs.²⁴⁴ At present, this type of illegal immigrant has formed a large-scale trend. As well as the border areas, the main destinations are Sichuan Province, Jiangxi Province, Guangdong Province, and Fujian Province.²⁴⁵ Illegal immigrants usually engage in labour-intensive industries,²⁴⁶ with many seasonal illegal labourers appearing during the busy season in rural areas. This is due to the seasonal production in rural areas and the shortage of labour. For example, Chongzuo City in Guangxi Province is a famous sugar city. When it is the season to squeeze sugar cane, the city needs an influx of workers to cut sugar cane. The shortfall reaches 50,000, and it is largely filled by illegal economic immigrants from Vietnam.²⁴⁷ In recent years, with further economic development and the rising living standards in China, major changes have taken place in the labour market, and it has been difficult to recruit low-skilled workers.²⁴⁸ The phenomenon of labour shortage has frequently occurred in the Yangtze River Delta and the Pearl River Delta,²⁴⁹ which provides better opportunities for illegal economic immigrants to work in China. According to the Reference News in 2015, there were more than 5,000 cases of illegal foreign workers arrested in Guangdong Province in 2014.²⁵⁰

Second, some people from Southeast Asian countries, represented by the Philippines, are illegally engaged in domestic work in China, which has also become a new trend in illegal employment in recent years. For example, in Beijing, Shanghai, Shenzhen, and other cities, Chinese families have illegally employed Filipino maids, and even some intermediary

²⁴⁴ 戴宏军 [Dai Hongjun] and 韦福安 [Wei Fuan] (n97).

²⁴⁵ 林孙俊 [Lin Sunjun] (n12) 49.

²⁴⁶ Ibid 56.

²⁴⁷ 戴宏军 [Dai Hongjun] and 韦福安 [Wei Fuan] (n97).

²⁴⁸ 林孙俊 [Lin Sunjun] (n12) 12.

²⁴⁹ Ibid 50.

²⁵⁰ 陶然 [Tao Ran], 《外媒：大批越南劳工非法入境中国 称最好赚钱》 [‘Foreign Media: A Large Number of Vietnamese Workers Illegally Entered China, Saying That It is the Best Way to Make Money’] 参考消息 *Reference News* (Web Page, 8 August 2015).
<<http://www.cankaoxiaoxi.com/china/20150808/896215.shtml>>.

agencies provide Filipino tutors and maids to Chinese families.²⁵¹ This kind of activity constitutes illegal employment.

- *Illegal economic immigrants from Africa.* Since China officially joined the World Trade Organisation (WTO) in 2001, China–Africa trade has increased significantly. By 2009, China had become Africa’s largest trading partner.²⁵² Many Africans gather in Guangzhou and other places through trade links. According to the data released by the Deputy Mayor of Guangzhou, Xiaodan Xie, in October 2014, the number of foreign immigrants living in Guangzhou was 118,000, of whom about 16,000 came from Africa, accounting for about 14 per cent of foreigners in Guangzhou.²⁵³ However, these data only include Africans who legally enter and stay in Guangzhou. The actual number of Africans far exceeds this number.²⁵⁴ According to a field investigation by Yucheng Liang, the proportion of illegal immigrants among Africans in Guangzhou is close to 40 per cent, of whom more than 75 per cent are from western Africa.²⁵⁵ At the same time, according to the data of public security departments on the cracking down of illegal activities and crimes conducted by ‘three-non’ foreigners, the proportion of illegal immigrants from Africa is the highest.²⁵⁶ For example, the proportion of Africans among the 2,788 ‘three-non’ foreigners investigated and dealt with in Guangzhou in 2014 was 32.42 per cent, and among those that were under criminal detention, the proportion of Africans was 60.28 per cent.²⁵⁷

According to Qinglin Pan, a member of the National Committee of the Chinese People’s Political Consultative Conference, the number of Africans entering Guangzhou in 2014 was estimated to have reached 500,000, of whom about 20,000 had legally entered, while

²⁵¹ 张杰 [Zhang Jie], 《从菲佣现象透视市场经济条件下的外国人就业管理》 [‘From the Phenomenon of Filipino Maids to Study on Management of Foreigners’ Employment under Market Economy’] (2007) 19(5) 山东警察学院学报 *Journal of Shandong Police College* 110–12.

²⁵² 《商务部：中国连续十年成非洲最大贸易伙伴》 [‘The Ministry of Commerce: China Becomes Africa’s Largest Trading Partner for Ten Consecutive Years’] 央视财经 *CCTV Finance* (Web Page, 5 June 2019) <https://www.sohu.com/a/318757562_114960>.

²⁵³ 裘萍 [Qiu Ping], 《广州市副市长：说广州有几十万非洲人是误解》 [‘The Deputy Mayor of Guangzhou: It Is a Misunderstanding to Say That There Are Several Hundred-Thousands of Africans in Guangzhou’] 搜狐新闻 *Sohu News* (Web Page, 1 November 2014) <http://news.ifeng.com/a/20141101/42352966_0.shtml>.

²⁵⁴ 梁玉成 [Liang Yucheng] (n95).

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ 程景伟 [Cheng Jingwei], 《广州非洲淘金客：感叹货物涨价，赚钱越来越难》 [‘Africans in Guangzhou: The Price of Goods Has Increased and It Is Getting Harder to Make Money’] 中国新闻网 *China News* (Web Page, 2 November 2014) <<http://news.sohu.com/20141102/n405691322.shtml>>.

the rest were illegal immigrants.²⁵⁸ Among those illegal immigrants, men accounted for more than 90 per cent and the annual growth rate was 30 to 40 per cent.²⁵⁹

These illegal immigrants from Africa mainly enter China through Sino–African trade links, including business people who come to China for transnational trade and people who provide intermediary services or manual labour and their relatives, who are mainly engaged in a trade industry or a low-skilled service industry.²⁶⁰ For example, some Africans in China trade with countries of origin, mainly focusing on clothing, shoes, watches, and children’s toys.²⁶¹ Some of these people enter China with valid visas, but overstay or work illegally, while others are smuggled into China.²⁶² These illegal immigrants from Africa consider family, relatives, and friends as their ties. When Africans enter China, they try to take their relatives to China, so that they can live and work together.²⁶³ At the same time, because of their darker skin tones, Chinese police officers often have difficulty in distinguishing them.²⁶⁴ They elude punishment by sharing a valid document with multiple people.²⁶⁵

At present, Africans in Guangzhou are gathering mainly in Xiaobei, Sanyuanli, Panyu, and Tianhetangxia.²⁶⁶ These areas are not only the gathering areas for Africans to trade but also have a large number of restaurants with African and Middle Eastern characteristics, forming their main living areas, and a large number of illegal economic immigrants from

²⁵⁸ 梁玉成 [Liang Yucheng] (n95).

²⁵⁹ 潘庆林 [Pan Qinglin], 《建议国家从严从速全力以赴解决广州黑人问题》 [*Suggesting the State Work Hard to Resolve the Problem of African Population in Guangdong Province*] (3 March 2017).

²⁶⁰ 《广州非洲籍非法移民的特征研究》 [Study on the Characteristics of Illegal Immigration in Guangzhou] (24 September 2014).

²⁶¹ There are four types of Africans in Guangzhou: the first type is trade merchants, who come to Guangzhou early, some of whom have gained long-term residency in China and are familiar with the local situation; the second type can be called ‘white-collar class’, working in office buildings and serving Middle Eastern owners; the third category is the intercontinental porters who take goods to their countries of origin for the first type of Africans; the fourth type is workers who carry goods in the shopping mall. Illegal economic immigrants mainly belong to the third and fourth categories. See 《广州非洲籍非法移民的特征研究》 [Study on the Characteristics of Illegal Immigration in Guangzhou] (24 September 2014).

²⁶² 梁玉成 [Liang Yucheng] (n95).

²⁶³ 林孙俊 [Lin Sunjun] (n12) 51.

²⁶⁴ Ibid 51.

²⁶⁵ Ibid 51.

²⁶⁶ 梁玉成 [Liang Yucheng] (n95).

Africa are hiding there.²⁶⁷ As China's economy continues to grow, there will be an increasing number of illegal economic immigrants from Africa.²⁶⁸

- *Illegal economic migrants from Europe and the United States.* These work in various educational institutions without obtaining the relevant authorisations. For example, in 2017, there were more than 400,000 foreign educators in China, but only one-third of them worked legally.²⁶⁹ Intermediary agencies tend to recruit illegal foreign educators from Europe, such as France and Germany.²⁷⁰
- *Illegal economic migrants engaged in the entertainment industry.* Some people from Russia and other countries engage in the entertainment service industry in China after they enter China for tourism or business purposes. For example, the police officers found Russian girls holding tourist passports and working illegally in a performing arts unit in China.²⁷¹

Therefore, in mainland China, there does exist illegal economic immigrants. Moreover, with the rapid economic development and the implementation of the One Belt and One Road Initiative in China, there is a sustained upward trend of illegal economic immigration.²⁷²

B Characteristics

In China, illegal economic immigrants have the following characteristics:

1. They are illegal. This situation inherently is illegal, not to mention that some of them conduct other illegal activities, such as entering China with forged documents, or even criminal activities, such as drug trafficking.²⁷³

²⁶⁷ 《非洲人的广州梦》 [Africans in Guangzhou] (10 April 2017).

²⁶⁸ 梁玉成 [Liang Yucheng] (n95).

²⁶⁹ 王会聪 [Wang Huicong], 《中国教育部出新规打击非法外教》 ['China's Ministry of Education Issues New Rules to Combat Illegal Foreign Educators'] 环球网 *World Wide Web* (Web Page, 7 August 2019) <<https://baijiahao.baidu.com/s?id=1641158666004008774&wfr=spider&for=pc>>.

²⁷⁰ Ibid.

²⁷¹ 陈澎 [Chen Peng], 《长沙警方查处 5 名持旅游护照非法就业的俄国女郎》 ['Changsha Police Officers Dealt with Russian Girls Who Worked Illegally with Tourist Passports'] 新华网 *Xinhua Net* (Web Page, 12 March 2004) <http://news.163.com/2004w03/12489/2004w03_1079068636068.html>.

²⁷² With the implementation of the One Belt and One Road Initiative in China, China's economy will continue to grow, and China will become an increasingly attractive destination country for people from other countries, including both legal economic immigrants and illegal economic immigrants. At the same time, China is about to face the issue of an ageing population. It has been projected that China will suffer the largest decrease in its total labour force and may become an immigration country. See ILO, *Perspectives on Labour Economics for Development* (ILO, 2013) 128.

²⁷³ 罗刚 [Luo Gang] (n29) 115.

2. They come from many different countries. In recent years, the composition of illegal economic immigrants in China has diversified. Not only do people from neighbouring countries such as Vietnam and Myanmar work in low-skilled industries,²⁷⁴ but there are also illegal immigrants from Africa and the Middle East engaging in business activities.²⁷⁵ There are also a large number of people from developed countries in Europe, the United States, and Southeast Asia engaging in highly skilled illegal employment activities in China.²⁷⁶ The diversification of the sources of illegal economic immigrants and the industries they are engaged in is obvious, which also brings considerable difficulties to the relevant management agencies.
3. Some illegal economic immigrants are also victims. In the smuggling of migrants, illegal immigrants may be exploited, forced to work, injured, raped, or even killed by the organisers.²⁷⁷ Their personal and property rights are seriously violated. They have experienced hardships and torture during the process of smuggling. Therefore, they are also victims of transnational crimes.
4. Their motivation and purpose are clear. These illegal immigrants came to China for economic reasons. Even if some people eventually marry and have children in China, their original purpose was financial gain. Vietnamese women marrying Chinese men living at the borders cannot be considered as immigration for family reasons, because the purpose is still to live a better life, which makes them economic immigrants.²⁷⁸ That is, their purpose is to earn money and settle in China.
5. Their methods are diverse. Illegal entry includes entry through non-governmental routes without legal documents, entry with forged documents, entry by cargo ship, entry by air, and entry by truck. Illegal residence includes the use of forged documents and false reasons for asylum. Illegal employment includes working without valid visas or work permits, working beyond the scope of their work permits, working beyond the scope or duration of Work-Study Management Measures, and working after the expiry of their work permits.

²⁷⁴ Ibid 99.

²⁷⁵ 《广州非洲籍非法移民的特征研究》 [Study on the Characteristics of Illegal Immigration in Guangzhou] (24 September 2014).

²⁷⁶ 王会聪 [Wang Huicong], 《中国教育部出新规打击非法外教》 [‘China’s Ministry of Education Issues New Rules to Combat Illegal Foreign Educators’] 环球网 *World Wide Web* (Web Page, 7 August 2019) <<https://baijiahao.baidu.com/s?id=1641158666004008774&wfr=spider&for=pc>>.

²⁷⁷ 但伟 [Dan Wei] (n108).

²⁷⁸ 林孙俊 [Lin Sunjun] (n12) 49.

6. The existence of illegal economic immigration is long-term and persistent. The root of illegal economic immigration is the imbalance of global economic development.²⁷⁹ Global integration has exacerbated this imbalance, which has made the gaps between countries increasingly wide.²⁸⁰ Judging from the situation in China's neighbouring countries, the domestic economy of underdeveloped countries cannot achieve qualitative changes in the short term, and the risk of local conflicts still exists.²⁸¹ For example, the local ethnic armed forces in Myanmar and the Myanmar government have been in direct conflict.²⁸² According to push-pull theory, it is a push factor, causing some Burmese to enter the border areas of China illegally, including illegal economic immigrants.²⁸³ Also, China's legal framework for immigration is incomplete and there are gaps in border management. Although the Chinese government has taken various measures to prevent and deal with illegal immigration, it is foreseeable that under the combined effects of several factors, illegal economic immigration activities in China will continue to exist for a long time and it is difficult to stop the growing trend in the short term.

C Reasons

The existence of illegal economic immigration in China stems from both economic and policy reasons.

- *Why do illegal economic immigrants come to China?*

In the context of globalisation, cross-boundary movements and the migration of populations have become an irreversible trend.²⁸⁴ With the development of economic globalisation, large-scale labour mobility has become a common phenomenon in the world, and the integration of the international labour market is increasing.

²⁷⁹ Guofu Liu, 'Perspectives on International Approaches to Deal with Irregular Migrants' (2016) 32(1) *Tribune of Study* 56–60.

²⁸⁰ Ibid.

²⁸¹ 罗刚 [Luo Gang], 《西南边境地区非法移民的产生条件及历史发展》 ['The Conditions and Historical Development of Illegal Immigration in the Southwest Border Region'] (2019) 5 云南大学学报 *Journal of Yunnan University* 137–44.

²⁸² Ibid.

²⁸³ Ernst Georg Ravenstein, 'The Laws of Migration' (1889) 52(2) *Journal of the Royal Statistical Society* 241–305.

²⁸⁴ Frederick A B Meyerson, Leticia Merino and Jorge Durand, 'Migration and Environment in the Context of Globalization' (2007) 5(4) *Frontiers in Ecology and the Environment* 182–90.

Earlier waves of international migration were from the developing countries of Asia and Africa to the developed countries of the United States, Australia, and Europe. However, as the Asian economies have grown, immigration to Asian countries has increased. Some countries whose economies are relatively developed, such as Singapore, have attracted many international workers, who come from countries whose economies are relatively underdeveloped, such as the Philippines and Vietnam. As China's economy continues to develop, China, as a traditional labour output country, has become a destination for cross-border labourers. In recent years, many economic immigrants have come to China from developing countries, such as Vietnam.²⁸⁵

According to the neoclassical economics migration theory, the key factor that affects the immigration decision is the economic imbalance between countries of origin and countries of destination, especially the wage gap.²⁸⁶ For those illegal economic immigrants in China, they came to China because they knew they would receive higher wages there. For example, Vietnamese labourers who cut sugar cane in Chongzuo city of Guangxi Province earn \$13 to \$16 a day, while they only earn \$5 to \$7 a day for the same work in Vietnam.²⁸⁷

According to the new economics migration theory, the purpose of immigration to a particular country is not only to gain higher wages there but, and more importantly, to reduce the migration risk and seek more ways of earning money.²⁸⁸ In other words, both migration cost and migration risk should be taken into consideration. Migration cost means that migrants (including illegal migrants) need to meet the costs of migration, including economic cost, time cost, and opportunity cost.²⁸⁹ Migration risk refers to the risks and consequences, both foreseen and unforeseen, that migrants (including illegal migrants) need to face when emigrating. When people consider migration, they will think about the following issues: whether to emigrate or not, which country to emigrate to, and whether they will emigrate legally or illegally. The

²⁸⁵ 戴宏军 [Dai Hongjun] and 韦福安 [Wei Fuan] (n97).

²⁸⁶ Larry A Sjaastad, 'The Costs and Returns of Human Migration' (1962) 70(5) *Journal of Political Economy* 80–93.

²⁸⁷ 戴宏军 [Dai Hongjun] and 韦福安 [Wei Fuan] (n97).

²⁸⁸ J Edward Taylor and Travis J Lybbert, *Essentials of Development Economics* (University of California Press, 2015).

²⁸⁹ Opportunity cost refers to the maximum value of something that is to be given to get something. It was originally a concept commonly used in economics. Here it refers to when people emigrate to one country, they must give up staying in their country of nationality and the opportunity of emigrating to other countries. See 罗刚 [Luo Gang], 云南边境民族地区非法移民问题及其治理研究 [*Research on Illegal Immigration and Its Governance in Yunnan Border Ethnic Areas*] (Law Press, 2012) 102.

consideration generally includes two aspects: the attractiveness of the destination country and the cost and risk of migrating to the destination country.²⁹⁰ The best option is that the destination country is the most attractive one, requiring the lowest expenditure and the least risk—namely, optimal migration.²⁹¹

China's economic level has risen so significantly that it is now higher than those of some developing countries; hence, it has become an attractive destination country for people from those developing countries. Moreover, there is a special geographical reason for people to choose China. China has many neighbouring countries and long borderlines. There are many paths between China and its neighbouring countries. For example, China–Vietnam and China–Myanmar borders are mostly covered by forests, and there are many access roads and paths in the border areas, which are extremely conducive to smuggling and hiding. Also, there are minimal government checking points in those paths, so it is easy for people from neighbouring countries to enter China without any legal documents.²⁹² The Chinese geographical position helps illegal economic immigrants because of less migration cost and migration risk.

Many Chinese people in the border areas and people from neighbouring countries belong to the same ethnic group. For example, ethnic minorities such as the Korean Minority in the northeast of China, the Yao Minority, the Miao Minority, and the Zhuang Minority in the southwestern part of China belong to the same ethnic group as those in the neighbouring countries and have a strong sense of national identity.²⁹³ This also facilitates illegal entry and illegal employment of people from neighbouring countries. For example, some illegal economic immigrants from Vietnam come to the Yunnan Province of China because they belong to the same ethnic minorities as the local people, speak the same or a similar language, and have similar customs, making it easy to find a job.²⁹⁴ Moreover, some illegal economic immigrants from Africa choose to stay in Guangzhou, especially in the trade areas that export goods to Africa such as the Sanyuanli area,²⁹⁵ because they can work for Africans who have

²⁹⁰ Ibid 102.

²⁹¹ Ibid 102.

²⁹² Ibid 101.

²⁹³ 罗刚 [Luo Gang] (n281).

²⁹⁴ Ibid.

²⁹⁵ 《非洲人在广州，他们主要分布在这些地方》 [‘Which Areas Do Africans Gather Mainly in Guangzhou?’] (18 December 2016).

legal status and can help them to continue to hide.²⁹⁶ According to migration system theory, international migration is not only a product of specific economic relations, but also specific political, historical, and cultural factors. Furthermore, having a similar language and customs can help illegal economic immigrants because of less migration risk and more opportunities to obtain a job. And although China has strengthened the infrastructure in the border areas in recent years, the prevention and control measures in the border areas are still inadequate, and there is a lack of barbed wire and monitoring equipment at the borders, so illegal entry cannot be found in time.

- *Why do employers employ illegal economic immigrants?*

In recent years, due to China's family planning policy, the ageing population process has accelerated, and the labour gap, especially in labour-intensive industries, has continued to expand.²⁹⁷ According to the China Institute for Employment Research, China's labour force has been declining in recent years. Between 2012 and 2016, the cumulative labour gap across the country reached 20 million.²⁹⁸ This decline inevitably triggers a series of reactions, such as labour shortages, difficulty in recruiting employees, and rising labour costs.²⁹⁹ Demand generates markets, and a large labour gap, to some extent, is bound to create conditions for illegal economic immigration.

In certain areas of China, there is a labour shortage. For example, in the Yunnan border area, there are not enough labourers because young local labourers have moved to big cities such as Beijing and Shanghai to seek work opportunities and higher wages.³⁰⁰ Moreover, in recent years, with further economic development and the rising living standards in China, major changes have taken place in the labour market. That is, domestic labour prefers decent jobs with high incomes and promising prospects, while is unwilling to engage in menial tasks with low incomes, resulting in insufficient supply of low-skilled labour.³⁰¹ The phenomenon of labour shortage has frequently occurred in the Yangtze River Delta and the Pearl River Delta,³⁰²

²⁹⁶ 《广州非洲籍非法移民的特征研究》 ['Study on the Characteristics of Illegal Immigration in Guangzhou'] (24 September 2014).

²⁹⁷ 《我国劳动力 5 年减少 2000 万，技能人才缺口将是中国经济转型升级的一大隐忧》 ['China's Labour Force Reduced by 20 Million in Five Years'] (22 November 2016).

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ 罗刚 [Luo Gang] (n281).

³⁰¹ 林孙俊 [Lin Sunjun] (n12) 12.

³⁰² Ibid 50.

which provides better opportunities for illegal economic immigrants to work in China. Thus, employers are forced to rely on illegal immigrants.

Additionally, in some low-skilled and low-margin industries, employers tend to employ illegal economic immigrants to reduce costs and increase profits because, with the rapid economic development of China, the wages of domestic workers have increased. For example, the wages of Chinese workers in low-skilled industries, such as the garment manufacturing industry, are about \$420 a month, while the wages of illegal Vietnamese workers are less than half of that.³⁰³ Even if the wages are the same, employers are more likely to employ illegal Vietnamese workers because they do not need to pay for their medical insurance and pension.

- *What are the policy reasons for illegal economic immigration in China?*

As well as economic reasons incentivising people from other countries to migrate to China, China's current policy on immigration promotes illegal economic immigration—namely, encouraging highly skilled talents to work in China, controlling general foreign workers, and limiting low-skilled foreign workers.³⁰⁴

Based on this policy, the *Regulation on Employment Management of Foreigners in China* was enacted.³⁰⁵ According to the Regulation, employers who employ foreigners shall apply for work permits for the foreigners, and foreigners can only be employed after being approved and granted the *Work Permit for Foreigners of the People's Republic of China*.³⁰⁶ Employers who want to employ foreigners are required to fill in the *Application Form for Employment of Foreigners* and apply to the competent department of industry with the following valid documents: (a) the foreigner's résumé; (b) a letter of intent from the employer; (c) a report on the reasons for the employment of the foreigner; (d) the qualification certificates of the foreigner to be engaged; (e) proof of the health status of the foreigner; and (f) other documents

³⁰³ 'Chinese Factories Employ a Lot of Illegal Vietnamese Workers' (n16).

³⁰⁴ 《外国人来华工作许可制度试点工作启动》 [Pilot Work on the Work Permit System for Foreigners in China Launched] (09 September 2016) < http://www.gov.cn/xinwen/2016-09/09/content_5107035.htm >.

³⁰⁵ 《外国人在中国就业管理规定》 [*Regulation on the Employment of Foreigners in China*] (PRC) Ministry of Labour, 22 January 1996. 《人力资源社会保障部关于修改<外国人在中国就业管理规定>的决定》 [*Decision of Ministry of Human Resources and Social Security on Amending the Regulation on the Employment of Foreigners in China*] (PRC) Ministry of Human Resources and Social Security, 13 March 2017.

³⁰⁶ 《人力资源社会保障部关于修改<外国人在中国就业管理规定>的决定》 [*Decision of Ministry of Human Resources and Social Security on Amending the Regulation on the Employment of Foreigners in China*] (PRC) Ministry of Human Resources and Social Security, 13 March 2017, art 5.

as prescribed by laws and regulations.³⁰⁷ There are too many required documents and some of them are difficult to provide, such as qualification certificates. As a result, employers are reluctant to apply for work permits for foreigners or cannot do so because they cannot provide the relevant documents.

V CURRENT REGULATORY FRAMEWORK IN CHINA

A Policy

China's current policy on immigration is to encourage highly skilled talents to work in China, to control general foreign workers, and to limit low-skilled foreign workers.³⁰⁸ To this end, the National Immigration Administration has issued twelve measures for foreigners to conveniently enter and exit China.³⁰⁹ These are outlined below.

1. Highly skilled foreign talents—that is, foreigners who can make a significant contribution—may apply to the immigration management department of the public security organ for permanent residence in China after being recommended by the relevant national authority, provincial government, or management department of the national key development area. Their foreign spouse and minor children may apply at the same time.
2. Foreigners may apply to the immigration management department of the public security organ for permanent residence in China provided they have worked continuously for four years and have lived for no less than six months of each year in China, have an annual wage income of not less than six times the average wage of urban employees of the region in the previous year, and have paid individual income tax of not less than 20 per cent of their annual income. Their foreign spouses and minor children may apply at the same time.
3. Chinese with foreign passports who are working in China may apply to the immigration management department of the public security organ for permanent residence in China if they have a PhD or have worked in a national key development area for four consecutive

³⁰⁷ Ibid art 11.

³⁰⁸ 《外国人来华工作许可制度试点工作启动》 [Pilot Work on the Work Permit System for Foreigners in China Launched] (09 September 2016) <http://www.gov.cn/xinwen/2016-09/09/content_5107035.htm>.

³⁰⁹ 中华人民共和国公安部 [The Ministry of Public Security of the People's Republic of China], 《国家移民管理局在全国范围内推广复制促进服务自贸区建设 12 条移民与出入境便利政策》 ['The National Immigration Administration Promotes 12 Immigration and Entry-and-Exit Convenient Policies Nationwide'] (We Page, 17 July 2019) <<https://www.mps.gov.cn/n6557558/c6613913/content.html>>.

years and have lived in China for no less than six months of each year. Their foreign spouse and minor children may apply at the same time.

4. Foreign experts and scholars—as well as foreign highly skilled management talents and professional technical personnel recognised by the competent personnel department of their government at the municipal level or above or the competent department of scientific and technological innovation—may apply to the port visa department of the public security organ for a port visa, provided they have been invited to do so by a national key university, research institute, or well-known enterprise. After entering the country, they may apply to the exit-and-entry management department of the public security organ with the invitation letter and other materials for multiple visas or residence permits with a validity period of less than five years.
5. Foreign talents and members of the innovation and entrepreneurship team introduced in national key development fields and industries may apply to the immigration management department of the public security organ for a residence permit with a validity of less than five years based on materials such as work permits. Foreign members of the innovation and entrepreneurship team may also apply for a residence permit (with a validity of less than five years) with the letter of guarantee from the team leader.
6. Foreigners who are making an outstanding contribution and foreigners who can supply the special needs of the country may encourage foreign members and scientific research assistants of the work team they lead to apply (within five years) to the immigration management department of the public security organ for a long-term visa or residence permit.
7. Foreigners hired by enterprises and institutions in China who have already obtained a work permit but were not able to apply in time for a work visa before coming to China may apply for a work-type residence permit to the immigration management department of the public security organ based on the work permit and other materials. Those who have twice applied for a work-type residence permit, with more than one year between each application, and have no violations of laws and regulations, may make a third application for a work-type residence permit to the immigration management department of the public security organ. The permit is valid for five years.
8. Highly skilled foreign talents working in a national key university, research institute, or well-known enterprise may do part-time innovation and entrepreneurship with the consent

of the work unit and part-time work unit, and this should be put on record at the immigration management department of the public security organ.

9. Outstanding foreign students who have obtained a bachelor's degree or above in national key universities and colleges and are engaged in innovative and entrepreneurial activities in China after graduation may apply to the immigration management department of the public security organ for a residence permit from two to five years based on the graduation certificate and proof of innovation and entrepreneurship.
10. Foreign students who have graduated from well-known international universities and come to China for innovation and entrepreneurship within two years of graduation may apply for a residence permit within two years to the immigration management department of the public security organ based on their academic qualifications.
11. Foreign students from overseas universities invited by well-known domestic enterprises and institutions for internships in China may apply to the immigration management department of the public security organ for a one-year visa for internship activities with an invitation letter and a confirmation letter from the universities. Foreign students from overseas universities who have come to China for internships under an intergovernmental agreement may apply for work-type residence permits under the regulations.
12. Explore the establishment of immigration service centres (sites) in areas where foreigners are more concentrated, and provide foreigners with policy advice, residence and travel, legal aid, language, and culture, studying and living convenience.

B Law

1 Legal System

China has not yet promulgated its immigration law, so there is no concept of 'illegal immigration'. Illegal immigrants are still encapsulated by the term 'three-non' foreigners. That is one of the reasons this study defines illegal immigrants as 'three-non' foreigners. The

management of these foreigners is scattered in administrative laws and regulations,³¹⁰ the Criminal Law,³¹¹ and the Public Security Management Punishment Law.³¹²

China has gradually developed and improved the management of illegal immigration. The first immigration regulation formulated and implemented after the founding of the PRC was the Interim Measures for the Entry and Exit of Overseas Chinese in August 1951.³¹³ Since then, the Regulation on the Administration of the Entry, Exit, Transit, Residence and Travel of Foreigners has been promulgated.³¹⁴ In the Third Plenary Session of the Eleventh Central Committee Communist Party of China, China formulated a national policy for the reform and opening-up of its economy. To adapt to the new situation, China formulated a series of laws and regulations related to entry and exit. The *Nationality Law of the People's Republic of China*,³¹⁵ the *Regulation on Foreign Vessels Carrying Smuggling Personnel to Our Port*,³¹⁶ the *Administration Law on the Exit and Entry of Citizens of the People's Republic of China*,³¹⁷ and the *Administration Law on the Entry and Exit of Foreigners of the People's Republic of China*³¹⁸ have been passed. On 26 December 1986, with the approval of the State Council, the Ministry of Public Security (MPS), the Ministry of Foreign Affairs (MFA), and the Ministry

³¹⁰ Administrative laws and regulations include Administrative Procedure Law, Administrative Penalty Law, Administrative Enforcement Law, Administrative Review Law, Administrative Permission Law, National Compensation Law.

³¹¹ The *Criminal Law of the People's Republic of China* mainly provides the legal basis for the definition and punishment of criminal activities by 'three-non' foreigners. Six crimes related to illegal entry and exit are specified in the third part of Chapter Three of the Criminal Law: Organising others to illegally cross the national border; Obtaining exit documents by deception; Providing forged or altered entry or exit documents; Selling entry or exit documents; Transporting others to illegally cross the national border; and Crossing the border illegally. See 《中华人民共和国刑法修正案（十）》 [The Tenth Amendment of Criminal Law of the People's Republic of China] (PRC) Standing Committee of the National People's Congress, 4 November 2017, art 318.

³¹² 《中华人民共和国治安管理处罚法》 [Public Security Management Punishment Law of the People's Republic of China] (PRC) Standing Committee of National People's Congress, 28 August 2005.

³¹³ 《华侨出入境暂行办法》 [Interim Measures for the Entry and Exit of Overseas Chinese] (PRC) Ministry of Public Security, 2 August 1951.

³¹⁴ 《外国人入境出境过境居留旅行管理条例》 [Regulation on the Administration of the Entry, Exit, Transit, Residence and Travel of Foreigners] (PRC) Standing Committee of the National People's Congress, 13 April 1964.

³¹⁵ 《中华人民共和国国籍法》 [Nationality Law of the People's Republic of China] (PRC) National People's Congress, 10 September 1980.

³¹⁶ 《关于对外籍船舶携带偷渡人员来我港口的处理规定》 [Regulation on Foreign Vessels Carrying Smuggling Personnel to Our Port] (PRC) the MPS, the MFA, and the Ministry of Transport, 5 March 1985.

³¹⁷ 《中华人民共和国公民出境入境管理法》 [Administration Law on the Exit and Entry of Citizens of the People's Republic of China] Standing Committee of National People's Congress, 22 November 1985.

³¹⁸ 《中华人民共和国外国人入境出境管理法》 [Administration Law on the Entry and Exit of Foreigners of the People's Republic of China] Standing Committee of National People's Congress, 22 November 1985.

of Transport jointly announced the Implementation Rules of the two laws.³¹⁹ On 1 March 1987, the MPS issued the *Internal Regulation and Explanation on the Implementation of the Implementation Rules of the Two Exit and Entry Administration Laws*.³²⁰ On 20 July 1995, the State Council issued the *Entry-and-Exit Border Inspection Regulation of the People's Republic of China*.³²¹ On 17 July 2000, the MPS and the State Administration for Industry and Commerce jointly issued the *Measures on Intermediary Activities for Private Entry and Exit*.³²² On 11 September 2000, the State Council promulgated the *Notice on Strengthening the Administration of Entry-and-Exit Intermediary Activities*.³²³ In the same year, the MPS promulgated the *Regulation on the Safety of Coastal Vessels*,³²⁴ which clearly states that it is necessary to standardise and strengthen the management of coastal vessels, and strictly prevent and combat illegal and criminal activities that use vessels for smuggling. The *Passport Law of the People's Republic of China* was passed at the 21st meeting of the Standing Committee of the Tenth National People's Congress on 29 April 2006.³²⁵ On 11 April 2007, the MPS passed the *Measures on the Issuance of Ordinary Passports and Entry-and-Exit Visas of the People's Republic of China*,³²⁶ which was implemented on 15 December 2007. The *Regulation on the Maritime Enforcement of Public Security Organs*³²⁷ was implemented from 1 December 2007 and the *Implementation Measures for Information Forecast of International Airline*

³¹⁹ 《中华人民共和国公民出境入境管理法实施细则》 [*Implementation Rules of the Administration Law on the Exit and Entry of Citizens of the People's Republic of China*] State Council, 3 December 1986; 《中华人民共和国外国人入境出境管理法实施细则》 [*Implementation Rules of the Administration Law on the Entry and Exit of Foreigners of the People's Republic of China*] State Council, 3 December 1986.

³²⁰ 《公安部印发关于执行两个出入境管理法实施细则的内部规定，说明的通知》 [*Circular issued by the Ministry of Public Security of the Internal Regulation and Explanation on the Implementation of the Implementation Rules of the Two Exit and Entry Administration Laws*] MPS, 19 February 1987.

³²¹ 《中华人民共和国出境入境边防检查条例》 [*Entry-and-Exit Border Inspection Regulation of the People's Republic of China*] State Council, 20 July 1995.

³²² 《因私出入境中介活动管理办法》 [*Measures on Intermediary Activities for Private Entry and Exit*] the MPS and the State Administration for Industry and Commerce, 13 July 2000.

³²³ 《国务院关于加强出入境中介活动管理的通知》 [*Circular of the State Council on Strengthening the Administration of Entry-and-Exit Intermediary Activities*] (PRC) State Council, 11 September 2000.

³²⁴ 《沿海船舶边防治安管理规定》 [*Regulation on the Safety of Coastal Vessels*] MPS, 1 May 2000.

³²⁵ 《中华人民共和国护照法》 [*Passport Law of the People's Republic of China*] Standing Committee of the National People's Congress, 29 April 2006.

³²⁶ 《中华人民共和国普通护照和出入境通行证签发管理办法》 [*Measure for the Issuance of Ordinary Passports and Entry-Exit Visas of the People's Republic of China*] MPS, 11 April 2007.

³²⁷ 《公安机关海上执法工作规定》 [*Regulation on the Maritime Enforcement of Public Security Organs*] MPS, 1 December 2007.

*Passengers*³²⁸ was implemented from 1 May 2008. On 30 June 2012, the National People's Congress passed the *Entry-and-Exit Administration Law of the People's Republic of China*,³²⁹ which came into effect on 1 July 2013, and the *Administration Law on the Exit and Entry of Citizens of the People's Republic of China* and the *Administration Law on the Entry and Exit of Foreigners of the People's Republic of China* were repealed as of the date of enforcement.

Moreover, the legal basis for the illegal residence and illegal employment of foreigners includes the *Regulation on Examination and Approval of Permanent Residence of Aliens in China* jointly issued by the MPS and the MFA in 2004;³³⁰ and the Ministry of Labour, the MFA, and the Ministry of Foreign Trade and Economic Cooperation jointly issued the *Regulation on the Employment of Foreigners in China* in 1996, which was amended by the Ministry of Human Resources and Social Security in 2010.³³¹

Also, China has formed a basic legal system for the management of illegal immigration. The highest legal basis for the management of 'three-non' foreigners comes from the Constitution. All other laws must take the Constitution as a fundamental guide and must not conflict with it. Article 32 of the Constitution states:

The People's Republic of China protects the legal rights and interests of foreigners in China. Foreigners in China must abide by the laws of the People's Republic of China. For political reasons, foreigners seeking asylum may be granted asylum.³³²

This article clarifies the territorial jurisdiction of China, a sovereign state, and constitutes the fundamental legal basis for the management of illegal immigration in China. At the same time, this article also clarifies the criteria and autonomy in assessing refugees—that is, it must be for political reasons and the right to grant asylum is left to China.

³²⁸ 《国际航班载运人员信息预报实施办法》 [*Implementation Measure for Information Forecast of International Airline Passengers*] MPS, 1 May 2008.

³²⁹ 《中华人民共和国出境入境管理法》 [*Entry-and-Exit Administration Law of the People's Republic of China*] (PRC) Standing Committee of National People's Congress, 30 June 2012.

³³⁰ 《外国人在中国永久居留审批管理办法》 [*Regulation on Examination and Approval of Permanent Residence of Aliens in China*] (PRC) MPS and MFA, 15 August 2004.

³³¹ 《外国人在中国就业管理规定》 [*Regulation on the Employment of Foreigners in China*] (PRC) Ministry of Labour, MPS, MFA, and Ministry of Foreign Trade and Economic Cooperation, 22 January 1996. 《关于修改〈外国人在中国就业管理规定〉的决定》 [*Decision on Amending Regulation on the Employment of Foreigners in China*] (PRC) Ministry of Human Resources and Social Security, 12 November 2010.

³³² 《中华人民共和国宪法》 [*Constitution of the People's Republic of China*] (PRC) National People's Congress, 11 March 2018, art 32.

The lower-level legal basis for the management of ‘three-non’ foreigners includes the Nationality Law,³³³ Criminal Law,³³⁴ Administrative Procedure Law and Administrative Punishment Law,³³⁵ Administrative Enforcement Law,³³⁶ Administrative Reconsideration Law,³³⁷ Administrative Permission Law,³³⁸ National Compensation Law,³³⁹ Entry-and-Exit

³³³ 《中华人民共和国国籍法》 [*Nationality Law of People's Republic of China*] (PRC) National People's Congress, 10 September 1980. It provides the legal basis for the identification of foreigners.

³³⁴ 《中华人民共和国刑法修正案（十）》 [*The Tenth Amendment of Criminal Law of People's Republic of China*] (PRC) Standing Committee of the National People's Congress, 4 November 2017. It mainly provides the legal basis for the definition and punishment of criminal activities by ‘three-non’ foreigners. Six crimes related to illegal entry and exit are specified in the third part of Chapter Three of the *Criminal Law*: Organizing others to illegally cross the national border; Obtaining exit documents by deception; Providing forged or altered entry or exit documents; Selling entry or exit documents; Transporting others to illegally cross the national border; and Crossing the border illegally.

³³⁵ 《中华人民共和国行政诉讼法》 [*Administrative Procedural Law of People's Republic of China*] (PRC) National People's Congress, 4 April 1989. 《关于修改<中华人民共和国行政诉讼法>的决定》 [*Decision on Amending Administrative Procedural Law of People's Republic of China*] (PRC) Standing Committee of the National People's Congress, 27 June 2017. 《中华人民共和国行政处罚法》 [*Administrative Punishment Law of People's Republic of China*] (PRC) National People's Congress, 17 March 1996. They provide the legal basis for the procedure when police officers investigate and punish ‘three-non’ foreigners and when ‘three-non’ foreigners seek judicial assistance.

³³⁶ 《中华人民共和国行政强制法》 [*Administrative Enforcement Law of People's Republic of China*] (PRC) Standing Committee of National People's Congress, 30 June 2011.

³³⁷ 《中华人民共和国行政复议法》 [*Administrative Review Law of People's Republic of China*] (PRC) Standing Committee of National People's Congress, 29 April 1999.

³³⁸ 《中华人民共和国行政许可法》 [*Administrative Permission Law of People's Republic of China*] (PRC) Standing Committee of National People's Congress, 27 August 2003.

³³⁹ 《中华人民共和国国家赔偿法》 [*National Compensation Law of People's Republic of China*] (PRC) Standing Committee of National People's Congress, 12 May 1994.

Administration Law,³⁴⁰ Public Security Management Penalty Law,³⁴¹ People's Police Law,³⁴² Armed Police Law,³⁴³ and Customs Law.³⁴⁴

The next lower-level legal basis for 'three-non' foreigners includes administrative regulations³⁴⁵ and departmental regulations.³⁴⁶ Moreover, due to China's vast territory and 14 neighbouring countries, and the different situations of neighbouring countries, to better meet the requirements of border management, Article 90 of the Entry-and-Exit Administration Law clearly states that provinces and autonomous regions bordering neighbouring countries can formulate local regulations under the border-management agreements signed between China and relevant countries.³⁴⁷ For example, Yunnan Province has promulgated the *Regulation on*

³⁴⁰ 《中华人民共和国出境入境管理法》 [*Entry-and-Exit Administration Law of the People's Republic of China*] (PRC) Standing Committee of National People's Congress, 30 June 2012. It is a specialised law for the management of entry and exit and the most important legal basis for 'three-non' foreigners. It includes the issuance of visas for foreigners, illegal residence, illegal employment, investigation, and repatriation, as well as penalties.

³⁴¹ 《中华人民共和国治安管理处罚法》 [*Public Security Management Punishment Law of People's Republic of China*] (PRC) Standing Committee of National People's Congress, 28 August 2005. 《全国人民代表大会常务委员会关于修改〈中华人民共和国治安管理处罚法〉的决定》 [*Decision of the Standing Committee of the National People's Congress on Amending Public Security Management Punishment Law of People's Republic of China*] (PRC) Standing Committee of National People's Congress, 26 October 2012. Article 62 of the Decision clearly states: 'Those who cross the border of the country shall be detained for less than 5 days or fined less than 500 yuan', which provides a basis for the management of 'three-non' foreigners.

³⁴² 《中华人民共和国人民警察法》 [*The People's Police Law of the People's Republic of China*] (PRC) Standing Committee of National People's Congress, 28 February 1995. 《全国人民代表大会常务委员会关于修改〈中华人民共和国人民警察法〉的决定》 [*Decision of the Standing Committee of the National People's Congress on Amending the People's Police Law of the People's Republic of China*] (PRC) Standing Committee of National People's Congress, 26 October 2012.

³⁴³ 《中华人民共和国武装警察法》 [*The People's Republic of China Armed Police Law*] (PRC) Standing Committee of National People's Congress, 27 August 2009.

³⁴⁴ 《中华人民共和国海关法》 [*Customs Law of the People's Republic of China*] (PRC) Standing Committee of National People's Congress, 22 January 1987.

³⁴⁵ The administrative regulations include 《中华人民共和国外国人入境出境管理条例》 [*Regulation on the Entry and Exit of Foreigners of the People's Republic of China*] (PRC) State Council, 12 July 2013 and 《中华人民共和国出境入境边防检查条例》 [*Regulation on the Exit and Entry Border Inspection of the People's Republic of China*] (PRC) State Council, 20 July 1995.

³⁴⁶ The departmental regulations include 《外国人在中国永久居留审批管理办法》 [*Regulation on Examination and Approval of Permanent Residence of Aliens in China*] (PRC) MPS and MFA, 15 August 2004 and 《外国人在中国就业管理规定》 [*Regulation on the Employment of Foreigners in China*] (PRC) Ministry of Labour, MPS, MFA, and Ministry of Foreign Trade and Economic Cooperation, 22 January 1996. 《关于修改〈外国人在中国就业管理规定〉的决定》 [*Decision on Amending Regulation on the Employment of Foreigners in China*] (PRC) Ministry of Human Resources and Social Security, 12 November 2010.

³⁴⁷ 《中华人民共和国出境入境管理法》 [*Entry-and-Exit Administration Law of the People's Republic of China*] (PRC) Standing Committee of National People's Congress, 30 June 2012, art 90.

Entry and Exit of People Outside the China–Myanmar Border Area in Yunnan Province.³⁴⁸ The legal basis for ‘three-non’ foreigners also includes international conventions,³⁴⁹ international treaties,³⁵⁰ or international agreements.³⁵¹

Therefore, laws and regulations have been promulgated that provide a legal basis for the management of ‘three-non’ foreigners in China. To a certain extent, they have adapted to the situation of the rising number of ‘three-non’ foreigners after China’s reform and opening-up of its economy. However, there is room for improvement. The current legislation focuses more on Chinese residents illegally emigrating to other countries rather than foreigners illegally immigrating to China. The relevant laws and regulations are fragmented, and the Migration Law has not been promulgated. There are overlaps or even conflicts between different levels of laws and regulations. As a result, there are still gaps and dilemmas in the guidance of practical work. When it comes to the implementation, some provisions are principles and lack specific requirements, resulting in the dilemmas of law enforcement in practice.

2 Specific Legal Basis

The specific legal basis for illegal immigration is scattered in the laws and regulations above, mainly about the identification of foreigners, foreigners’ entry and exit, residence, and employment.

a) Identification of foreigners

The Nationality Law stipulates that if both or one of the parents is a Chinese citizen and the person was born in China, he/she has Chinese nationality; however, if either or both of the parents are Chinese citizens and have settled in a foreign country and the person has foreign nationality due to birth in that country, he/she does not have Chinese nationality.³⁵² If the parents are stateless or of unknown nationality and they have settled in China and the person

³⁴⁸ 《云南省中缅边境地区境外边民入境出境管理规定》 [*Regulation on Entry and Exit of People Outside the China–Myanmar Border Area in Yunnan Province*] (PRC) People’s Government of Yunnan Province, 13 July 1990.

³⁴⁹ International conventions include UNHCR’s *International Convention Relating to Stowaways*, 10 October 1957, and *Convention Relating to the Status of Stateless Person*, 28 September 1954.

³⁵⁰ International treaties include *Treaty of Good-Neighbourliness, Friendship and Cooperation between the People’s Republic of China and the Russian Federation*, Standing Committee of National People’s Congress, 27 October 2001.

³⁵¹ International agreements include the *Agreement on China–Vietnam Land Border Ports and Their Management System*, 18 November 2009.

³⁵² 《中华人民共和国国籍法》 [*Nationality Law of the People’s Republic of China*] (PRC) National People’s Congress, 10 September 1980, art 5.

was born in China, he/she has Chinese nationality.³⁵³ In other words, if an illegal immigrant marries a Chinese citizen, their children can acquire Chinese nationality as long as they are born in China. At the same time, it is also clear that people who were born in China and then went abroad but have not acquired foreign nationality should retain their Chinese nationality. The Nationality Law also stipulates the conditions for foreigners to apply for Chinese nationality: close relatives of Chinese people; those who have settled in China; and those with other legitimate reasons.³⁵⁴ This also provides the legal basis for eligible illegal immigrants to obtain Chinese nationality. For example, illegal immigrants who marry Chinese citizens and have children born in China can apply for Chinese nationality because they are close relatives to their children.

b) Entry and exit of foreigners

The Entry-and-Exit Administration Law stipulates that foreigners must apply for a visa before entering China.³⁵⁵ It specifies four types of visas—diplomatic, courtesy, official and ordinary—and explicitly stipulates the procedures and conditions for issuing visas.³⁵⁶ It also stipulates that, for humanitarian reasons or other emergency-entry requirements, a port visa can be processed to avoid the problem of illegal immigration caused by special circumstances and emergencies.³⁵⁷ It also provides for situations where visa-free or temporary entry is possible.³⁵⁸

The Regulation on the Entry and Exit of Foreigners, as a supporting administrative regulation of the Entry-and-Exit Administration Law, further refines the entry-and-exit system, explicitly stipulating the types of ordinary visas. It divides ordinary visas into C, D, F, G, J, L, M, Q1, R, S, X, and Z types according to different purposes to better manage the entry and exit of foreigners.³⁵⁹ As well, it specifies the enforcement department of repatriation, repatriation methods, and costs.³⁶⁰

³⁵³ Ibid art 6.

³⁵⁴ Ibid art 7.

³⁵⁵ 《中华人民共和国出境入境管理法》 [*Entry-and-Exit Administration Law of the People's Republic of China*] (PRC) Standing Committee of National People's Congress, 30 June 2012, art 15.

³⁵⁶ Ibid art 16.

³⁵⁷ Ibid art 20.

³⁵⁸ Ibid art 22.

³⁵⁹ 《中华人民共和国外国人入境出境管理条例》 [*Regulation on the Entry and Exit of Foreigners of the People's Republic of China*] (PRC) State Council, 12 July 2013, art 6.

³⁶⁰ Ibid art 29-32.

The Regulation on the Exit-and-Entry Border Inspection stipulates that foreigners entering and exiting China must hold relevant legal documents, pass through the required ports, and undergo border inspections.³⁶¹ This clarifies the venues, procedures, and documents for foreigners entering and leaving the country. Foreigners who are restricted by the public security organs and those who are not allowed to enter or exit by laws and regulations are further subject to special restrictions. However, if the country of nationality of the foreigner has a special agreement with China on the entry and exit of its nationals, the agreement will be implemented. For example, China has reached special agreements with many countries on border management, such as Myanmar,³⁶² Vietnam,³⁶³ and Laos.³⁶⁴

c) Residence of foreigners

The Entry-and-Exit Administration Law has general provisions on the residence system of foreigners in China. It explicitly requires that after a foreigner enters China, if the duration of the visa does not exceed 180 days, he or she may stay in China with a visa.³⁶⁵ If a residence permit is required, an application should be made to the public security organ at or above the county level where the residence is planned, and the period of stay must not exceed the duration indicated in the visa.³⁶⁶ Those who need to extend their stay must apply to the public security organ in advance.³⁶⁷ It also stipulates that during the period of stay in China, foreigners shall not engage in activities that are inconsistent with the reasons for residence and shall not enter restricted areas.³⁶⁸ Foreigners who have made outstanding contributions to China or meet special conditions can obtain permanent residence upon approval.³⁶⁹

The Regulation on the Entry and Exit of Foreigners regulates foreigner residence permits and divides them into five categories: work residence permits, study residence permits, journalist

³⁶¹ 《中华人民共和国出境入境边防检查条例》 [Regulation on the Exit and Entry Border Inspection of the People's Republic of China] (PRC) State Council, 20 July 1995, art 7.

³⁶² *Agreement between the Government of the People's Republic of China and the Government of the Union of Myanmar on China–Myanmar Border Management and Cooperation*, 25 March 1997.

³⁶³ *Agreement on China–Vietnam Land Border Ports and Their Management System*, 18 November 2009.

³⁶⁴ *Agreement between the Government of the People's Republic of China and the Government of the Lao People's Democratic Republic on Border Ports and Their Management System*, 23 August 2011.

³⁶⁵ 《中华人民共和国出境入境管理法》 [Entry-and-Exit Administration Law of the People's Republic of China] (PRC) Standing Committee of National People's Congress, 30 June 2012, art 29.

³⁶⁶ Ibid art 30.

³⁶⁷ Ibid art 32.

³⁶⁸ Ibid art 37.

³⁶⁹ Ibid art 47.

residence permits, reunion residence permits, and personal affairs residence permits, and clarifies the requirements for different types of residence permits.³⁷⁰

The measures for the *Examination and Approval of Foreigners' Permanent Residence in China* make it clear the conditions for foreigners to obtain permanent residence, targeting highly skilled talents and reunion residence. Specifically, it stipulates that if a person living in China:

- serves as a deputy general manager, deputy director or above, or
- has a deputy senior title such as Associate Professor or Associate Researcher, or
- enjoys equivalent treatment for four consecutive years, and
- has stayed in China for a total of not less than three years, and
- has a good tax record

that person can apply for permanent residence.³⁷¹ It also stipulates that the spouse of a Chinese citizen who:

- has been married for five years, and
- has resided in China for five consecutive years for at least nine months a year, and
- has a stable living guarantee and domicile

can apply for permanent residence.³⁷² This provides legal support for some illegal immigrants who have formed a de facto relationship with a Chinese citizen, helping them to obtain permanent residence. Of course, in practice, China's standards for granting permanent residence are extremely strict, and only several hundreds of permanent residence permits are issued each year. Indeed, it has been described by the media as the hardest green card in the world to acquire.³⁷³

d) *Employment of foreigners*

The Entry-and-Exit Administration Law has general provisions on the employment of foreigners in China. It stipulates that foreigners working in China must obtain relevant work

³⁷⁰ 《中华人民共和国外国人入境出境管理条例》 [*Regulation on the Entry and Exit of Foreigners of the People's Republic of China*] (PRC) State Council, 12 July 2013, art 15.

³⁷¹ 《外国人在中国永久居留审批管理办法》 [*Regulation on Examination and Approval of Permanent Residence of Aliens in China*] (PRC) MPS and MFA, 15 August 2004, art 6.

³⁷² Ibid art 13.

³⁷³ 《世界上最难拿的绿卡》 ['The Hardest Green Card in the World'] (Web Page, 5 November 2018) <<https://baijiahao.baidu.com/s?id=1616304158589530098&wfr=spider&for=pc>>.

permits and work-type residence permits, and the Human Resource and Social Security Ministry of the State Council and the foreign expert department shall formulate employment instructions for foreigners to work in China, and the competent department of the State Council shall formulate a management system for work-study programs for foreign students.³⁷⁴ Moreover, it clearly states that three types of activities constitute illegal employment: working in China without a work permit and a work-type residence permit, working beyond the scope of the work permit, and foreign students breaking the conditions of the work-study program.³⁷⁵

The Regulation on the Employment of Foreigners in China has more specific provisions on the employment of foreigners in China.³⁷⁶ It specifies that foreigners working in China must hold a Z-type visa and obtain a work permit.³⁷⁷ Also, employers must only hire foreigners for jobs that have special needs, and where suitable candidates in the country are temporarily lacking.³⁷⁸ It also clearly stipulates that, except as approved by the Ministry of Culture, employers should not hire foreigners for commercial performances.³⁷⁹ Moreover, it explicitly prohibits the employment of foreigners by individual economic organisations and individual citizens.³⁸⁰

3 Management Departments

On 13 March 2018, at the First Session of the Thirteenth National People's Congress, State Councillor Yong Wang was entrusted by the State Council with the *Explanation on the State Council's Institutional Reform Program*, stating that it planned to reform and establish the National Immigration Administration.³⁸¹ It stated that the integration of the entry-and-exit management and border inspection duties of the MPS, the establishment of a reasonable visa management mechanism, and the establishment of the National Immigration Administration would be managed by the MPS.³⁸² The main responsibilities of the National Immigration

³⁷⁴ 《中华人民共和国出境入境管理法》 [Entry-and-Exit Administration Law of the People's Republic of China] (PRC) Standing Committee of National People's Congress, 30 June 2012, art 41 and 42.

³⁷⁵ Ibid art 43.

³⁷⁶ 《关于修改〈外国人在中国就业管理规定〉的决定》 [Decision on Amending Regulation on the Employment of Foreigners in China] (PRC) Ministry of Human Resources and Social Security, 12 November 2010.

³⁷⁷ Ibid art 8.

³⁷⁸ Ibid art 6.

³⁷⁹ Ibid art 9.

³⁸⁰ Ibid art 33.

³⁸¹ 王勇 [Wang Yong], 《关于国务院机构改革方案的说明》 [‘Explanation on the State Council's Institutional Reform Program’] (Web Page, 13 March 2018) <http://www.gov.cn/guowuyuan/2018-03/14/content_5273856.htm>.

³⁸² Ibid.

Administration are ‘to coordinate the formulation of immigration policies and organise their implementation, and to manage the entry and exit of foreigners’. It is also responsible for inspecting port documents, managing border affairs, managing foreigners’ stay and permanent residence, managing refugees, and managing nationality issues. Moreover, it takes the lead in coordinating the management of ‘three-non’ foreigners and the repatriation of illegal immigrants, it is responsible for the management of Chinese citizens for private entry and exit, and it is obliged to engage in international cooperation in the field of migration.³⁸³

Article 41 of the *Program for Deepening the Reform of the Party and State Institutions* stipulates:

With the further improvement of China’s economy, the number of foreigners who come to work and live in China has continued to increase, and new requirements have been put forward for the better management of immigration services. To strengthen the overall coordination of immigration and entry-and-exit management, the State integrates the entry-and-exit management and border inspection duties of the Ministry of Public Security, establishes a reasonable visa management mechanism, and establishes the National Immigration Administration. Its main responsibilities are to coordinate the formulation of immigration policies and organise their implementation, and to manage the entry and exit of foreigners and Chinese citizens’.³⁸⁴

Therefore, the National Immigration Administration is a specialised department for illegal immigration management. According to the interviews, China’s immigration affairs are managed by the National Immigration Administration, which is led by the MPS. For specific implementation, local public security bureaus deal with illegal immigration. Thereafter, the information will be submitted to the National Immigration Administration. For example, in Beijing, the entry-and-exit brigade of the Beijing Public Security Bureau leads and directs the entry-and-exit teams of all branches of the Beijing Public Security Bureau to manage illegal immigration. Each branch of the Beijing Public Security Bureau has personnel who are specialised in dealing with ‘three-non’ foreigners.³⁸⁵

³⁸³ Ibid.

³⁸⁴ 《深化党和国家机构改革方案》 [‘Program for Deepening the Reform of the Party and State Institutions’] (21 March 2018) <Web Page, http://www.gov.cn/zhengce/2018-03/21/content_5276191.htm#1>.

³⁸⁵ This information was given by the interviewee L from public security bureaus 9 April 2019.

4 Implementation

To learn more about the situation of illegal immigration in China, I conducted 22 interviews from March to May 2019. The participants were police officers from public security bureaus (n=7) and police stations (n=5), migration lawyers (n=5), and migration scholars (n=5).

a) Police officers from public security bureaus

In China, there is no concept of illegal immigrants in practice. They are called ‘three-non’ foreigners: illegal entry, illegal residence or illegal overstay, and illegal employment. According to the police officer M from the public security bureau, there are about 50 to 60 ‘three-non’ foreigners every year in his jurisdiction.³⁸⁶ They come from countries around the world, including Europe, Africa, and Southeast Asia. Most of them come to China for economic purposes while some for marriage. There are all types of ‘three-non’ foreigners, but mainly those of illegal overstay and illegal employment in Beijing. Generally, although they hold a tourist visa to enter China, they come to work without authorised documents. Many ‘three-non’ foreigners engage in language teaching.³⁸⁷ All participants opined that ‘three-non’ foreigners have not brought any benefits to China and have harmed China in terms of management, social stability, and medical treatment.³⁸⁸

Regarding the implementation process, first, the public security network system automatically sends a warning to those foreigners whose visas have expired. The police officers who are in charge of network data also know as soon as a foreigner overstays his/her visa. They then look at the movements of the ‘three-non’ foreigner using the background data. The police officers narrow down the scope in this way. After that, the Beijing Public Security Bureau will choose a branch according to the reduced scope to conduct a further investigation. The investigation covers statistics about the population, inspection of hotels in the jurisdiction, passport checking of foreigners on the roads, and encouragement of residents to report. For the work unit where the ‘three-non’ foreigner is likely to work, such as a language teaching centre, the police officers conduct regular inspections, about twice a year. After the police officers find the ‘three-non’ foreigner, they send him/her to a Beijing central detention centre dedicated to ‘three-non’

³⁸⁶ This information was given by the interviewee M from the public security bureau on 12 April 2019.

³⁸⁷ Ibid.

³⁸⁸ This was given by seven interviewees (interviewee A, interviewee E, interviewee G, interviewee H, interviewee J, interviewee L and interviewee M) from public security bureaus on 28 March, 2 April, 4 April, 5 April, 7 April, 9 April and 12 April 2019.

foreigners. Usually, this person stays there briefly before being repatriated to his/her home country unless it is difficult to find out the person's nationality. In this situation, the 'three-non' foreigner does not leave the detention centre until the nationality is determined.³⁸⁹

Regarding the detention and repatriation cost issue, when the property is executable, the 'three-non' foreigner pays the relevant fees. If there is no property, the relevant embassy will pay. If the embassy cannot be determined, the Chinese government will pay. For special 'three-non' foreigners who have married Chinese citizens and have children, their children have Chinese nationality according to the Chinese principle of combining bloodline with birthplace providing that they do not have other nationalities because China does not recognise dual nationality. The next step for 'three-non' foreigners depends on their situation. If their visa expires within one year, they will need to go through the process of acquiring a family reunion visa. If it expires in more than one year, they will be repatriated first, then they can reapply for the family reunion visa and the application will probably be approved.³⁹⁰

The ideal situation is that the police officers find the 'three-non' foreigners as soon as their visas expire and deal with the issue according to the measures mentioned above. However, there are always difficulties in reality. The difficulties are twofold. One is the difficulty in finding 'three-non' foreigners. For example, many hold tourist visas and work in China without authorised documents. It is difficult to find them if their employer or colleagues do not report them. Another example is if a foreigner is supposed to be working in A company according to his/her work permit but is actually working in B company. It is difficult to find them if neither company nor the foreigner reports.³⁹¹ It is particularly difficult to find 'three-non' foreigners if they are from Southeast Asia as they look similar to Chinese. For example, if a 'three-non' foreigner from Southeast Asia rents an apartment in a community, it is nearly impossible to find it out unless the neighbours report. A police officer stressed that the 'three-non' foreigners are extremely difficult to find if they hide in the community, suburban village, farmhouse, or factory dormitory. Although there is a census, it only happens once every five years, and although the police station and the neighbourhood committee have the responsibility of registering every person's information, there is no timely update. The hotel generally records customer information so that the police officers can query it through the network system. The

³⁸⁹ This information was given by the interviewee M from the public security bureau on 12 April 2019.

³⁹⁰ This information was given by the interviewee L from the public security bureau on 9 April 2019.

³⁹¹ This information was given by the interviewee M from the public security bureau on 12 April 2019.

police station also regularly convenes a meeting of hotel managers to emphasise the importance of registering customer information, but individual cases of non-registration cannot be avoided. The farmhouses are even more difficult because they are not part of the network and so the police cannot check customer information through the network system.³⁹² It is also difficult to find illegal workers if the factory deliberately conceals them. The police officers check the factories regularly, but the frequency is not high—up to once or twice a year. Therefore, there are still some ‘three-non’ foreigners who remain undetected, and there is no better way at the moment.³⁹³ The other difficulty is how to deal with special foreigners after the police officers have found them—for example, when the police officers find ‘three-non’ foreigners and are about to send them to the detention centre, only to have them produce refugee documents.³⁹⁴

In terms of grassroots management, it is worth noting that two interviewees held opposite opinions about the grassroots management of illegal immigration in China. One believed that China is one of the best countries in terms of grassroots management.³⁹⁵ He argued that there is ‘comprehensive security management’ in China, which means that the police can use the power of the whole society to discover ‘three-non’ foreigners, including the neighbourhood committee, street office, community police volunteers, and long-term residents.³⁹⁶ The other thought that grassroots management in China is the most problematic form of management.³⁹⁷ She argued that it is likely that grassroots managers ignore some problems because of personal relationships.³⁹⁸

b) Police station officers

Without giving specific data, officers in police stations stated that there are illegal immigrants in their jurisdictions.³⁹⁹ Almost all these illegal immigrants have entered China legally but have overstayed for economic reasons.⁴⁰⁰ They have not brought any benefits to China. On the contrary, they have had many negative effects on China, including adding to the burden on

³⁹² Ibid.

³⁹³ Ibid.

³⁹⁴ Ibid.

³⁹⁵ This information was given by the participant A from the public security bureau on 28 March 2019.

³⁹⁶ Ibid.

³⁹⁷ This was given by the participant N from the police station on 14 April 2019.

³⁹⁸ Ibid.

³⁹⁹ This was given by five interviewees (interviewee B, interviewee D, interviewee F, interviewee I and interviewee N) from police stations on 29 March, 31 March, 3 April, 6 April and 14 April.

⁴⁰⁰ Ibid.

police officers because the police must register all personal information of illegal immigrants within 24 hours. The police check the authenticity of the immigrants' documents using the network system. However, there are foreigners without registration in their jurisdictions because some foreigners are not aware of the registration requirement.⁴⁰¹ A police officer stressed that advertising should be strengthened.⁴⁰²

Regarding how to detect illegal immigrants, there are several ways, such as through cooperation between the police station and the neighbourhood committee or the community security staff.⁴⁰³ For example, the neighbourhood committee and community security staff are familiar with people of the community and they will investigate if they see strangers coming in and out of the community. They will report to the police station if they have doubts about this person. The police station also sends staff to visit key areas regularly and conducts road investigations. As well, they will mobilise the masses to look for illegal immigrants.⁴⁰⁴

Concerning how to manage foreigners, the police stations have been in charge of population management (instead of the neighbourhood committee or the village committee) since 2018.⁴⁰⁵ That is to say, the designated personnel of the police station coordinate with the neighbourhood committee or the village committee for the management of the immigrant population. The number of designated personnel depend on the number of immigrants. The designated staff who manage immigrant populations take a series of actions to register information about the immigrants.

First, the immigrants go to the village committee or the neighbourhood committee to take a rental contract template, sign it, and send it back to the village committee or neighbourhood committee for backup. Thus, the designated staff know the immigrants and can record their personal information. However, some homeowners and immigrants do not sign contracts or sign them privately. They do not go to the neighbourhood committee or the village committee for backup, so a second way is needed. In this situation, there is no penalty for the homeowner, provided the homeowner kicks the person out. If not, the matter is reported to the superior public security organ.

⁴⁰¹ Ibid.

⁴⁰² This information was given by the participant D from the police station on 31 March 2019.

⁴⁰³ Ibid.

⁴⁰⁴ Ibid.

⁴⁰⁵ This was given by the participant N from the police station on 14 April 2019.

Second, the police officers visit the household from time to time. This usually happens before an important national conference and at least once a year. Third, the designated police staff regularly visit key areas several times a year, such as factory dormitories, farmhouses, or small hotels. They record the immigrants' information in the network system. However, if they make mistakes—for example, if they do not register information about the immigrants who have caused problems such as drug trafficking—the police officers are not punished, just criticised.⁴⁰⁶ It is worth noting that three participants mentioned that the farmhouses should be regulated because it is extremely difficult for them to find illegal immigrants if they hide in a farmhouse.⁴⁰⁷

c) Migration law scholars

Five scholars participated in this interview. Four scholars did not answer the question of how many illegal immigrants were in China while one scholar stated that there were about 400,000 illegal immigrants in China,⁴⁰⁸ which is close to what previous research has found. These illegal immigrants come from different countries around the world but mainly from neighbouring developing countries, such as Laos, Vietnam, and Myanmar.⁴⁰⁹ There are also many illegal immigrants from Africa in Guangzhou Municipal.⁴¹⁰ Among these illegal immigrants, there are illegal entry, illegal overstay, and illegal employment.⁴¹¹ In terms of their purposes, some come to China for economic reasons while others come for marriage. They may engage in all kinds of occupations, such as working in labour-intensive factories, working in restaurants, doing farm work in remote areas, doing business, or doing criminal activities. They have brought many benefits to China, including boosting the local economy, providing a source of potential spouses, supplying cheap labour, and promoting population stability and ethnic integration. However, they have also had numerous negative effects on China, including upsetting social stability, causing international conflicts, bringing infectious diseases, and breeding crimes such as prostitution, drug trafficking, and smuggling.⁴¹²

⁴⁰⁶ Ibid.

⁴⁰⁷ This was given by three interviewees (interviewee B, interviewee I and interviewee N) from police stations on 29 March, 6 April, and 14 April 2019.

⁴⁰⁸ This was given by the interviewee T on 1 May 2019.

⁴⁰⁹ This was given by five migration law scholars (interviewee K, interviewee P, interviewee R, interviewee T and interviewee U) on 8 April, 14 April, 26 April and 1 May 2019.

⁴¹⁰ This information was given by the interviewee R on 26 April 2019.

⁴¹¹ This was given by five migration law scholars (interviewee K, interviewee P, interviewee R, interviewee T and interviewee U) on 8 April, 14 April, 26 April and 1 May 2019.

⁴¹² Ibid.

Regarding implementation, the public security organs carry out special activities to clean up illegal immigrants, or to conduct inspections in key areas. When illegal immigrants are found, they are dealt with according to the Entry-and-Exit Administration Law. The law can also apply to the employer who employs illegal immigrants.⁴¹³ In terms of how to deal with a lessor who rents out his/her property to illegal immigrants, it depends on whether the lessor is a rental agent or an individual. If a rental agent, the public security organs will accord with the relevant management measures to deal with the matter. However, an individual who rents out his/her property to illegal immigrants cannot be punished.⁴¹⁴

In terms of difficulties, first, it is difficult to prevent people from neighbouring countries entering China illegally, because there are a lot of paths between China and its neighbouring countries. Second, it is difficult to deal with illegal immigrants who are married to Chinese citizens and have children. According to the Entry-and-Exit Administration Law, they should be repatriated; however, repatriation will separate parents and children and may have a destabilising effect on society.⁴¹⁵

In terms of refugees, one of the scholars interviewed had conducted research.⁴¹⁶ According to him, China only resettles refugees temporarily. At present, China has no capacity to resettle refugees permanently. It is usually a transit country waiting for another country to accept the refugees. For refugees who are temporarily resettled, there is usually an area designated for them, and work is arranged for them. However, these refugees need to be registered to enter or leave the area. There are problems, such as the irresponsibility of the staff who register entry-and-exit information, resulting in refugees leaving the area unnoticed for an extended period. Therefore, it is possible that when the police officers find the illegal immigrants, they show the police refugee certificates. Moreover, as the refugee certificate is issued by the UNHCR and is recognised by various countries including China, this leads to cooperation and communication problems between the UNHCR and China.⁴¹⁷

⁴¹³ This information was given by the interviewee K on 6 April 2019.

⁴¹⁴ Ibid.

⁴¹⁵ According to the two migration law scholars T and U interviewed on 1 May 2019, repatriation is not a good method in this situation because it may upset illegal immigrants and their families, and perhaps also the sending country, affecting social stability and international relations.

⁴¹⁶ This was given by the interviewee T on 1 May 2019.

⁴¹⁷ Ibid.

d) Migration lawyers

Five migration lawyers took part in the interviews. Their participation was highly appreciated, although most of them could not give valuable information. None had provided consultation about how to immigrate to China. Moreover, the primary purpose of most lawyers is to make profits. For them, helping wealthy Chinese to emigrate can earn them more money, so they focus on foreign immigration policies rather than China's immigration policies, even though illegal immigration has become a concern in China. However, one migration lawyer, who has offices in four cities, had his own understanding of illegal immigration.⁴¹⁸ As far as he knows, there are illegal immigrants in Xi'an and even more in Shenzhen and Guangzhou. Also, he foresees that the One Belt and One Road strategy will attract more immigrants to China, including illegal immigrants. Illegal immigrants come mainly from Africa, Vietnam, Myanmar, and Cambodia. Generally, they hold tourist visas to work illegally in China for economic reasons. There are illegal immigrants from Vietnam working in labour-intensive factories and illegal immigrants from Africa engaging in the wholesale of small goods. They have brought to China economic benefits and friendly international relationships such as Sino-African cooperation. They may also have some negative impacts on China, but overall, according to this lawyer, the economic benefits far outweigh the negative impacts.⁴¹⁹

The lawyer suggested that the key factor is the economy, so China should pay more attention to economic factors. He believes that the reason there are so many illegal immigrants from Africa in Guangzhou is that they can bring economic benefits to China. It is not that China cannot deal with this issue, he said, but that China does not want to.⁴²⁰

5 Summary

Books and articles give general information on policy and law about illegal economic immigration in China, but there is little reference to how it operates in practice and what difficulties that police officers encounter. Also, the information is often just a summary and there is a lack of specific information about the implementation process. For example, it is hard to glean from books and news articles which department discovers illegal immigrants, how the different departments cooperate, and how they deal with illegal immigrants. However, through

⁴¹⁸ This information was given by the migration lawyer V on 5 May 2019.

⁴¹⁹ Ibid.

⁴²⁰ Ibid.

the interviews, this study gained valuable first-hand information about the implementation process in practice.

VI PROBLEMS WITH THE CURRENT REGULATORY FRAMEWORK IN CHINA

A Policy

China's current policy of introducing immigrants is designed to encourage highly skilled talents to work in China, control general foreign workers, and limit low-skilled foreign workers.⁴²¹ This policy is because China is a country with sufficient labourers. China hopes to attract highly skilled talents rather than general foreign workers or low-skilled foreign workers, so the restriction on the employment of low-skilled foreigners is extremely strict. Moreover, in looking at the 12 measures for foreigners to conveniently enter and exit China introduced by the National Immigration Administration, it is obvious that these measures are aimed at highly skilled talents rather than foreign workers, not to mention low-skilled foreign workers. However, although China is a country with a large number of labourers, there is an uneven distribution of labourers. As a result, there are regional labour shortages and seasonal labour shortages, especially of low-skilled labourers. Chongzuo City in Guangxi Province is a typical example.⁴²² Therefore, it is necessary to adjust the policy to adapt to the reality of market needs.

In terms of politics, this policy does not consider international relations. China's neighbouring countries encourage low-skilled labourers to work in China, which promotes employment and increases family income. In this case, China's current policy of severely restricting low-skilled foreign workers will not receive cooperation from the sending countries, causing more illegal migrants to come to China, and may also cause dissatisfaction among the sending countries, harming international relations.

In terms of individual interests, due to China's relatively developed economy, immigrants come to China because China provides more job opportunities and higher income. Moreover, some female immigrants are willing to marry Chinese men because it will give them a better life.

⁴²¹ 《外国人来华工作许可制度试点工作启动》 [Pilot Work on the Work Permit System for Foreigners in China Launched] (09 September 2016) < http://www.gov.cn/xinwen/2016-09/09/content_5107035.htm>.

⁴²² 戴宏军 [Dai Hongjun] and 韦福安 [Wei Fuan] (n97).

When it comes to national interests, first, China is entering an ageing society, so it needs to consider whether to allow more immigrants to work in China. Second, some factories and farms in China tend to hire foreign workers due to the lack of workers or the lower costs involved. The interests of these industries need to be considered when formulating the immigration policy. Third, if the current policy is maintained, it needs to be considered whether it will lead to more illegal immigration, thereby affecting national interests such as public health.

B Legislation

As mentioned above, the stakeholders in the field of immigration law should at least include Chinese industries, citizens, immigrants, and the country itself. However, China's current legislation on immigration does not fully consider the interests of all parties, resulting in narrow and incoherent legal provisions.

1 No Systematic Laws and Regulations

Although there are many laws and regulations involved in the management of illegal immigrants, there is hardly any centralised law except the Entry-and-Exit Administration Law. As a result, in practice, law enforcement departments must look for a corresponding legal basis among the many laws and regulations. This greatly increases the difficulty and accuracy of law enforcement. To further complicate matters, the relevant provisions are scattered in different laws and regulations, and some provisions about the same issue are different or even conflict with one another, which causes confusion for law enforcers and undermines the seriousness and authority of the law.

Taking illegal entry as an example, in the Criminal Law and the Public Security Management Punishment Law, the description is 'smuggling into the country (border)' while the description in other laws and regulations is 'illegal entry'. Also, for the same illegal entry activities, different laws and regulations have significant differences in terms of penalties. The Criminal Law stipulates that those who are in serious circumstances shall be sentenced to imprisonment of less than one year, or detention or control, as well as fines. The Entry-and-Exit Administration Law stipulates that fines ranging from 1,000 to 5,000 yuan shall be imposed. In serious cases, they shall be detained for five to 10 days and may also be fined from 2,000 to 10,000 yuan. The Public Security Management Penalty Law stipulates that they shall be detained for less than five days or fined less than 500 yuan. The Regulation on the Entry-and-Exit Border Inspection stipulates that a fine from 500 to 2,000 yuan shall be imposed, or they

shall be detained. Such differences in the laws and regulations will inevitably lead to the phenomenon of different penalties for the same issue.

This situation leads to three problems. First, police officers are likely to be confused because they do not know which law to apply. Second, the discretion of police officers is too great, causing two executors to have completely different results for the same situation. Third, it shows that the legislators did not consider the interests of immigrants, leading to different penalties in the same situation, which is unfair for immigrants.

2 Some Laws and Regulations Lagging

In the early days of the reform and opening-up of the economy, few foreigners entered mainland China. Over time, this number increased, and many new problems emerged. However, some laws and regulations have not been updated, so new problems cannot be solved quickly. For example, according to the Nationality Law, China does not recognise dual nationality. However, in practice, some people who have acquired nationality abroad do not report this situation to China for various reasons, and even maliciously conceal their dual-citizenship status. When these kinds of people enter China, their acts constitute illegal immigration, but China currently lacks laws and regulations aimed at such acts. For another example, after the Entry-and-Exit Administration Law was promulgated, except for the Regulation on the Entry and Exit of Foreigners, other supporting subordinate laws or detailed implementation rules have not been promulgated. Also, the Implementation Rules for the Administrative Law on the Entry and Exit of Foreigners has lost its legal effect due to the abolition of the former superior law: the Administrative Law on the Entry and Exit of Foreigners. This situation leads to poorly explained provisions. For example, according to Article 81 of the Entry-and-Exit Administration Law, foreigners who disobey this law and whose activities cause a serious situation can be deported by the MPS,⁴²³ but there is no detail about what activities constitute a serious situation. This will confuse police officers, or it will cause excessive discretionary power, which is unfair to immigrants.

⁴²³ 《中华人民共和国出境入境管理法》 [*Entry-and-Exit Administration Law of the People's Republic of China*] (PRC) Standing Committee of the National People's Congress, 30 June 2012, art 81.

3 A Gap in the Current Legislation

There is no provision for illegal economic immigrants who have married Chinese citizens and have children. According to the Entry-and-Exit Administration Law, they can be repatriated.⁴²⁴ However, this considers neither the citizen's interests nor the immigrant's interests because it will cause a separation between parents and children. According to the *Universal Declaration of Human Rights*,⁴²⁵ the *International Covenant on Economic, Social and Cultural Rights*,⁴²⁶ the *International Covenant on Civil and Political Rights*,⁴²⁷ and the *Convention on the Rights of the Child*,⁴²⁸ the basic rights of immigrants and children will be violated if parents and children are separated. Moreover, the repatriation of illegal immigrants may cause dissatisfaction among their Chinese spouses, leading to social instability.

4 Penalties for Illegal Immigration Relatively Light

Taking illegal residence as an example, the Entry-and-Exit Administration Law has a maximum fine of 10,000 yuan for foreigners who reside illegally in China, and the detention period is from five to 10 days. However, in practice, some illegal immigrants have high incomes, and a fine of 10,000 yuan will not serve the purpose of punishment and warning, while other people have poor financial conditions. They cannot pay fines nor do they care about 10 days' detention. For another example, the Entry-and-Exit Administration Law provides for the punishment of illegal employment of foreigners: if the circumstances are minor, a fine of 5,000 to 20,000 yuan shall be imposed; if the circumstances are serious, the detention shall be between five days and 10 days, and a fine ranging from 5,000 to 20,000 yuan may also be imposed. Once again, the punishment is too mild for high-income earners, while low-income earners cannot pay the fines and do not care about 10 days' detention. Compared with China, many developed countries have imposed more severe penalties on illegal employment. For example, a person found guilty of illegal employment in Japan will be sentenced to up to three years of hard labour or imprisonment, or a fine of up to 3 million Japanese yen, and the person

⁴²⁴ Ibid art 62.

⁴²⁵ *Universal Declaration of Human Rights 1948*, UDHR, G.A. res.217 A(III), UN Doc.A/810, UDHR, art 16 and 25.

⁴²⁶ *International Covenant on Economic, Social and Cultural Rights 1966*, entered into force on 3 January 1976, 993 UNTS 3, ICESCR, art 10.

⁴²⁷ *International Covenant on Civil and Political Rights 1966*, 16 December 1966, entered into force on 23 March 1976, 999 UNTS 171, ICCPR, art 23 and 24.

⁴²⁸ *Convention on the Rights of the Child 1989*, entered into force on 2 September 1990, 1577 UNTS 3, CRC, art 7, 9, 26 and 27.

in charge of an enterprise that employs illegal immigrants will be sentenced to up to three years of hard labour or a fine of up to 2 million Japanese yen.⁴²⁹ In contrast, the punishment for illegal residence and illegal employment of foreigners in China is too light to achieve the purpose of punishment and deterrence.

C Management Departments

1 Specific Agencies Not Set Up

So far, the National Immigration Administration has been established.⁴³⁰ This program has solved many problems, such as the problem of fragmented management.⁴³¹ However, there are still many problems that need to be solved. In January 2019, the National Immigration Administration launched preparation work for the Immigration Service Centres. The plan was to have them operating in the first half of the year.⁴³² However, so far Immigration Service Centres in many areas have not been established, and the selection criteria and job responsibilities of the staff are yet to be specified.

2 A Lack of Staff, Funds, and Detention Spaces

Due to the steady increase in the number of foreigners and illegal immigrants, both the National Immigration Administration and the public security departments are facing insufficient staffing, funds, and detention space.⁴³³ For example, according to the *Procedural Regulation of Public Security Organs for Administrative Cases*, if administrative detention or other restrictions on personal freedom are required for the foreigner, local public security organs must report the foreigner's information and case details to provincial public security organs within 48 hours. Provincial public security organs should notify the embassy or consulate of the foreigner in China within a specified time and notify the foreign affairs department at the same level.⁴³⁴

⁴²⁹ 宋培培 [Song Peipei] (n189).

⁴³⁰ 王勇 [Wang Yong] (n381).

⁴³¹ In the early days of the reform and opening-up of the economy, fewer foreigners were entering China. Therefore, China distributed management power to many different departments to avoid allocating more personnel.

⁴³² 《国家移民管理局启动移民事务服务中心筹建工作》 [National Immigration Administration has Launched the Preparation Work for the Immigration Service Centres] (24 January 2019) <http://www.gov.cn/xinwen/2019-01/24/content_5360973.htm>.

⁴³³ 林孙俊 [Lin Sunjun] (n12) 114.

⁴³⁴ 《公安机关办理行政案件程序规定》 [Procedural Regulation of Public Security Organs for Administrative Cases] (PRC) MPS, 19 December 2012, art 254. 《公安部关于修改〈公安机关办理行政案件程序规定〉的决定 (第二次修正)》 [Decision of the Ministry of Public Security on Amending Procedural Regulation of Public Security Organs for Administrative Cases] (PRC) MPS, 25 November 2018, art 254.

This series of procedures has greatly increased the manpower and time costs of public security departments. As a result, in practice, for some illegal immigrants who should be detained, law enforcement departments (due to complex detention procedures or lack of detention spaces) do not choose freedom-restrictive measures such as administrative detention, but warnings or fines to deal with illegal immigrants.⁴³⁵ This is one of the reasons for some laws and regulations not being strictly enforced for a long time.

D Enforcement

The interviews revealed that the main problem with enforcement is that China needs to improve the organisational structure of its enforcement procedures. This is reflected in four aspects. First, the National Immigration Administration has not set up specific and clear tasks and objectives that accurately reflect the intentions of law and policy. Second, public security bureaus have not assigned tasks and outcome standards to subordinate units. Third, there is a lack of a supervision system. Fourth, some personnel are not responsible due to the lack of a guarantee system.

Taking each in turn:

- *Specific and clear tasks have not been set up.* The National Immigration Administration, which is a new government agency established in 2018, has not yet set up specific and clear tasks and objectives that accurately reflect the intentions of law and policy.⁴³⁶ As stated earlier, its general responsibilities are ‘to coordinate the formulation of immigration policies and organise their implementation, and to manage the entry and exit of foreigners’. It is also responsible for inspecting port documents and managing border affairs, managing foreigners’ stay and permanent residence, managing refugee, and managing nationality issues. Moreover, it takes the lead in coordinating the management of ‘three-non’ foreigners and the repatriation of illegal immigrants; it is responsible for managing Chinese citizens for private entry and exit; and it is obliged to engage in international cooperation in the field of migration.⁴³⁷ However, at present, specific and clear tasks and objectives have not been set up. Moreover, as mentioned earlier, the current policy needs improvement.

⁴³⁵ 林孙俊 [Lin Sunjun] (n12) 114.

⁴³⁶ 王勇 [Wang Yong] (n381).

⁴³⁷ Ibid.

After that, specific tasks and clear objectives that accurately reflect the intention of the revised policy can be set up.

- *Public security bureaus have not assigned tasks and outcome standards to subordinate units.* According to the interviews from the police stations, the issue of illegal immigration is just a small task for them, accounting for a small proportion of their work.⁴³⁸ Therefore, the public security bureau does not assign specific tasks and outcome standards regarding illegal immigration to them. For example, there are no specific requirements for when, how often, and how they discover illegal immigrants. If they find an illegal immigrant, they will hand him/her over to the public security bureau.⁴³⁹
- *There is no supervision system.* First, grassroots managers are likely to ignore some problems because of personal relationships. Second, farmhouse management needs improvement. Third, the legal liability of grassroots managers needs specification. Owing to the absence of a supervision system, it is difficult to detect grassroots managers who ignore some problems. Even if they are discovered, there are no effective measures to punish them.
- *A guarantee system is also needed.* With the absence of a guarantee system, there are problems with the management staff. The first problem is not having a common language. At present, the sources of illegal immigrants in China are wide, and many of them do not speak Chinese, while some grassroots staff are weak in English so they cannot communicate effectively.⁴⁴⁰ The second problem is weak management awareness. According to the interviews, some grassroots staff do not know enough about the harm caused by illegal immigration, and they think that it is too troublesome to manage, leading to poor management in practice.⁴⁴¹ The third problem is that a few staff are not qualified enough. According to the interviews, some grassroots managers are not proficient in the

⁴³⁸ This was given by five interviewees (interviewee B, interviewee D, interviewee F, interviewee I and interviewee N) from police stations on 29 March, 31 March, 3 April, 6 April and 14 April.

⁴³⁹ This information was given by three participants (interviewee B, interviewee D and interviewee F) from police stations on the 29 March, 31 March, and 3 April 2019.

⁴⁴⁰ 王瑜 [Wang Yu] and 李楠 [Li Nan], 《提高警务人员英语应用能力的必要性及有效途径研究》 [Study on the Necessity and Effective Ways of Improving Police Officers' English Application Ability] (2017) 2 邢台学院学报 *Journal of Xingtai College* 135–36.

⁴⁴¹ This information was given by the participant N from the police station on 14 April 2019.

law, and lack systematic training in business, resulting in some situations that they do not know how to handle.⁴⁴²

In addition to the poor organisational structure, there are problems in terms of public awareness, infrastructure, repatriation, refugee management, and the contradiction between the need for illegal immigration and the fight against illegal immigration. Taking each in turn:

- *Public awareness.* Many people are unaware of the seriousness of the issue of illegal immigration. They think that, provided illegal immigrants do not engage in theft, robbery, and other criminal activities that directly endanger public security or the safety of people's lives and property, they do not constitute serious harm and some people are willing to show them tolerance. Coupled with this is their relatively weak legal consciousness. Some people not only do not report to public security organs but actively assist illegal immigrants.⁴⁴³ They even take the initiative to provide all kinds of assistance to illegal immigrants for personal interests. For example, some people rent their houses or apartments to illegal immigrants privately, and some people employ illegal immigrants. All these activities have made it more difficult for public security organs to manage illegal immigration.
- *Infrastructure.* This needs improvement. There is a lack of isolation and monitoring facilities in some border areas. For example, in border areas such as Yunnan, the borderline is not well signposted and there is no isolation equipment, leading to illegal immigrants entering China very easily.⁴⁴⁴ As well, since February 2017, the MPS, with the approval of the State Council, decided to retain biometric information such as the fingerprints of foreigners during entry inspections.⁴⁴⁵ However, unfortunately, as of now, this biological information database is still under construction, and there are even some border checkpoints that have not been equipped with corresponding equipment.
- *Repatriation.* There are difficulties in implementing the repatriation regulations. The Entry-and-Exit Administration Law makes clear the repatriation system for illegal immigrants. However, there are still many operational difficulties in the implementation. For example,

⁴⁴² Ibid.

⁴⁴³ 罗刚 [Luo Gang] (n29) 100.

⁴⁴⁴ Ibid 101.

⁴⁴⁵ 中华人民共和国公安部 [The Ministry of Public Security of the People's Republic of China], 《中国边检机关将在入境检查时留存外国人指纹》 ['Chinese border inspection authorities will keep foreigners' fingerprints during entry checks'] (Web Page, 9 February 2017) <<https://www.mps.gov.cn/n2253534/n2253535/n2253537/c5629921/content.html>>.

the internal management systems of some neighbouring countries are chaotic, which leads to unilateral management by the Chinese government in border areas, and it is difficult to cooperate with the country regarding repatriation.⁴⁴⁶ In another example, people in some border areas or economically backward areas have such weak legal awareness that they acknowledge cross-border illegal marriages.⁴⁴⁷ Once the illegal immigrants are forcibly repatriated, this is likely to cause fierce opposition. Additionally, according to the interviewees, some illegal immigrants refuse to provide their identity information, which makes it difficult to verify their nationality.⁴⁴⁸ All these difficulties have led to an ineffective repatriation system.

- *Refugee management.* The interviewee T mentioned the problem of refugees.⁴⁴⁹ The overall number of refugees in China is not large, and their proportion in the total population is not high. However, the geopolitical situation in some neighbouring countries has deteriorated, and there is a possibility of large-scale refugee influxes.⁴⁵⁰ At the same time, with the increase of exchanges between China and foreign countries, the number of foreigners applying for asylum in China is likely to increase.⁴⁵¹ However, there are still some problems in refugee acceptance, resettlement, and management in China. First, there is no refugee law. Although there are provisions in the Constitution on the asylum for refugees, there is no specialised law or regulation to specify them. At present, the clear regulations for refugees are mainly the Entry-and-Exit Administration Law, Article 46 of which stipulates:

Foreigners who apply for refugee status, during the identification of refugee status, can rely on temporary identity certificates issued by public security organs to stay

⁴⁴⁶ 夏寒 [Xia Han], 《中缅边境三非人员遣返问题的政府治理研究》 [A Study of Government Governance on the Repatriation of Three-Non Foreigners on the China–Myanmar Border] in 熊术新 [Xiong Shuxin] 晏雄 [Yan Xiong]; 韩全芳 [Han Quanfang], 云南边境地区社会治理与社会发展 [Social Governance and Social Development in Yunnan Border Area] (Social Science Literature Press, 2016) 191.

⁴⁴⁷ 梅英 [Mei Ying] and 李红军 [Li Hongjun], 《中缅边境地区跨境婚姻发生动因追溯》 [‘The Sino–Burmese Border Region Cross-Border Marriage Motivation Back’] (2015) 17(4) 云南开放大学学报 *Journal of Yunnan Open University* 28–31.

⁴⁴⁸ This information was given by the interviewee L from the public security bureau on 9 April 2019.

⁴⁴⁹ This was given by the interviewee T on 1 May 2019.

⁴⁵⁰ 莎仁高娃 [Sharengaowa] and 徐杰 [Xu Jie], 《试析我国难民事务管理的缺失》 [‘An Analysis of the Lack of Refugee Management in China’] (2012) 1 武汉公安干部学院学报 *Journal of Wuhan Public Security Cadre’s College* 10–12.

⁴⁵¹ 宋宏梅 [Song Hongmei] and 张金平 [Zhang Jinping], 《中国在难民问题上的非传统安全风险与应对研究》 [‘China’s Non-traditional Security Risks and Responses to Refugees’] (2019) 4 福州大学学报 (哲学社会科学版) *Journal of Fuzhou University (Philosophy and Social Science Edition)* 47–54.

in China; foreigners identified as refugees can stay in China with refugee documents issued by public security organs.⁴⁵²

This provision only stipulates the right of residence of refugees in China, but there are no clear provisions on refugee application, identification, and management, which means there is no legal basis for refugee management.

Second, there are no standards for refugee identification. As China does not have clear regulations on refugee identification, applicants can only apply to the UNHCR, which will conduct unilateral reviews and identification. This leads to the Chinese government losing the initiative in identifying refugees. If the Chinese government disagrees with the UNHCR, it is difficult to resolve the matter.⁴⁵³

Third, it is difficult to realise the rights of refugees. The legal documents of foreigners in China include visas and residence permits, while there is no clear provision regarding refugee documents, which makes it difficult to realise some rights of refugees.⁴⁵⁴

Fourth, applicants for refugee status become a potential public order problem. They do not receive financial assistance from the UNHCR until they have obtained refugee status, so they are likely to engage in illegal employment.

Lastly, the responsibilities of executors are unclear. With the absence of relevant laws, there is currently no specialised department in charge of refugee affairs in China. According to the interviews, police officers do not know how to deal with refugee problems.⁴⁵⁵

- *Contradiction between the need for illegal immigration and the fight against illegal immigration.* The immigration policy is aimed at ensuring national interests by introducing immigrants and striving to balance the conflicting goals of the needs of immigration and the restrictions on immigration.⁴⁵⁶ Domestic workers are unwilling to accept the reality that

⁴⁵² 《中华人民共和国出境入境管理法》 [Entry-and-Exit Administration Law of the People's Republic of China] (PRC) Standing Committee of the National People's Congress, 30 June 2012.

⁴⁵³ 黄可君 [Huang Kejun], 《论中国难民地位的甄别及管理制度构建》 ['Study on the Identification of Refugee Status in China and the Construction of Management System'] (2016) 4(45) 中国公共安全 (学术版) *China Public Security (Academy Edition)* 131–34.

⁴⁵⁴ 秦伟 [Qin Yi], 《论我国对难民的法律保护》 ['Study on China's Legal Protection of Refugees'] (中国政法大学 [China University of Political Science and Law], 2011).

⁴⁵⁵ This information was given by the interviewee L from the public security bureau on 9 April 2019.

⁴⁵⁶ Guofu Liu, 'Perspectives on International Approaches to Deal with Irregular Migrants' (Research Report, Policy Seminar to Support the Implementation of China's New Exit-and-Entry Law, 21–22 November 2012).

the existence of illegal immigration leads to lower wages for domestic workers. At the same time, given the population and the need for social stability, the State must crack down on illegal immigration. However, employers need illegal immigrants as cheap labour,⁴⁵⁷ and some border areas are also in need of illegal immigrants.⁴⁵⁸ Besides, China must take international relations into consideration. Therefore, the country's determination and ability to combat illegal immigrants are likely to be frustrated. The destination country needs a labour force, while the source country needs foreign exchange. Until legal immigration channels meet the needs of economic development, illegal immigration will be inevitable.

VII REASONS WHY THESE PROBLEMS EXIST IN CHINA'S CONTEXT

A Ignorance of Illegal Economic Immigration

The management of illegal economic immigration is a work that requires great attention and implementation from the top-level departments to the grassroots departments.⁴⁵⁹ However, for a long time, both the government and the society have not paid enough attention to this work, and the lack of long-term planning has led to many problems, such as defective legal systems, insufficient management systems, and outdated management techniques.⁴⁶⁰

The underlying reasons for the lack of attention are: first, because China is a populous country, compared with its own population, the number of illegal economic immigrants is relatively small. From the view of social management, compared with the domestic population, the management of foreign population is less important and urgent. At the same time, the number of illegal economic immigrants accounts for a small proportion of the total population of China, so the social impact caused by them is easily overlooked.

Second, due to historical reasons, the time for China to fully open to the outside world is relatively short. Accordingly, the time for the emergence of large-scale illegal economic

⁴⁵⁷ 'Chinese Factories Employ a Lot of Illegal Vietnamese Workers' (n16).

⁴⁵⁸ 戴宏军 [Dai Hongjun] and 韦福安 [Wei Fuan] (n97).

⁴⁵⁹ 王振宇 [Wang Zhenyu], 《当前我国移民管理中存在的问题与对策浅析》 ['Analysis on the Problems and Countermeasures in the Current Immigration Management in China'] (2018) 11 中国人民武装警察部队学院 *The Chinese People's Armed Police Force Academy* 144-46.

⁴⁶⁰ 曾郁 [Zeng Yu], 《构建移民和出入境管理法律体系的思考》 ['To Build Legal System for Immigration and Exit and Entry Administration'] (2020) 1(1) 司法警官职业教育研究 *Vocational Education Research of Judicial Police* 40-47.

immigration is also short.⁴⁶¹ Some management problems have not yet been highlighted, so the government has not paid enough attention. Although the issue of illegal economic immigration in China has caused some obvious adverse social impacts in recent years and attracted the attention of some regional governments, it is only an individual and short-term management strengthening activity from a national perspective.⁴⁶²

Third, China has a vast territory and there is uneven distribution and high mobility of illegal economic immigrants.⁴⁶³ Although the Chinese government has noticed this problem, the management awareness of local governments has not yet reached the same level. This is due to the different number and problems of foreign population in the jurisdiction. From the current practical situation of foreign population management in mainland China, the governments of economically developed areas and border areas pay more attention to foreign population management than that of economically backward areas and inland areas.⁴⁶⁴ This is caused by the differences in actual population management needs between regions.⁴⁶⁵ It also reflects the impact of imbalanced regional development in China on population management.⁴⁶⁶ To be specific, according to the neoclassical economics migration theory, the key factor that affects the immigration decision is the economic imbalance between countries of origin and countries of destination, especially the wage gap.⁴⁶⁷ For those illegal economic immigrants in China, they came to China because they knew they would receive higher wages there.⁴⁶⁸ However, when they came to China, they needed to choose which city they would like to work. At this time, the economically developed coastal cities are more attractive than the economically

⁴⁶¹ 明越 [Ming Yue] (n210).

⁴⁶² 林孙俊 [Lin Sunjun] (n12) 116.

⁴⁶³ 郭烁 [Guo Shuo] (n32).

⁴⁶⁴ 杨其霖 [Yang Qilin], 《我国非法移民的国内法控制研究》 [‘Research on the Domestic Law Control of Illegal Immigration in China’] (西北大学 [Xibei University], 2018).

⁴⁶⁵ 赵书 [Zhao Shu], 《中国大陆地区外籍人口管理研究》 [‘Research on Foreign Population Management in Mainland China’] (西南财经大学 [Southwestern University of Finance and Economics], PhD Thesis, 2013).

⁴⁶⁶ 潘虹 [Pan Hong], 《区域经济环境下在华外国人就业管理研究——以上海地区为例》 [‘Employment Management of Foreigners in China Under the Regional Economy-Shanghai Area’] (上海外国语大学 [Shanghai International Studies University], 2013).

⁴⁶⁷ Larry A Sjaastad, ‘The Costs and Returns of Human Migration’ (1962) 70(5) *Journal of Political Economy* 80–93.

⁴⁶⁸ 宋全成 [Song Quancheng], 《非法外国移民在中国的现状、症结与对策》 [Illegal Immigrants in China: The Present Situation, Crux and Countermeasures] (2015) 1 山东大学学报 (哲学社会科学版) *Journal of Shandong University (Philosophy and Social Sciences)* 55–63.

backward inland areas.⁴⁶⁹ Correspondingly, with the increase in the number of foreigners, the economically developed regions pay more attention to foreign population management. On the contrary, the economically underdeveloped areas lack the awareness of foreign population management.⁴⁷⁰

The *Program for Deepening the Reform of the Party and State Institutions* issued in March 2018 has clearly stated that the Chinese government has noticed that a series of new situations of illegal economic immigration have emerged.⁴⁷¹ Moreover, there are a series of problems and deficiencies in the management system.⁴⁷² In the next step, local governments and the whole society need to be more aware of the importance and urgency of illegal economic immigration.

B Insufficient Enforcement

Although many laws and regulations on the management of foreign population have been promulgated and revised in recent years, in practice, the problem of insufficient enforcement has been restricting the actual effect of illegal immigration management. Taking residence registration as an example, although the Chinese law stipulates that foreigners need to go to the local public security department to register for long-term residence in China,⁴⁷³ in fact however, if the foreigner does not actively register, the public security department will not take the initiative to ask for evidence from the border inspection departments. They will not actively supervise registration.⁴⁷⁴

The underlying reasons for the insufficient enforcement are: first, illegal immigration management often involves diplomacy or international relations, and may rise to an international issue, which is politically sensitive.⁴⁷⁵ At the same time, China has been very friendly to foreigners for a long time, which has formed a traditional management concept that

⁴⁶⁹ 林孙俊 [Lin Sunjun] (n12) 116.

⁴⁷⁰ Ibid.

⁴⁷¹ 《深化党和国家机构改革方案》 [‘Program for Deepening the Reform of the Party and State Institutions’] (21 March 2018) <Web Page, http://www.gov.cn/zhengce/2018-03/21/content_5276191.htm#1>.

⁴⁷² Ibid.

⁴⁷³ 《中华人民共和国出境入境管理法》 [Entry-and-Exit Administration Law of the People’s Republic of China] (PRC) Standing Committee of National People’s Congress, 30 June 2012, art 39.

⁴⁷⁴ This information was given by the interviewee M from the public security bureau on 12 April 2019.

⁴⁷⁵ 于晓燕 [Yu Xiaoyan] and 蒋中慧 [Jiang Zhonghui], 《非法移民问题的国际法思考》 [‘International Law Thinking of Illegal Immigration’] (2012) 19 西江月 *Xijiangyue* 100-106.

foreigners were granted super-national treatment.⁴⁷⁶ This has caused relevant management departments to deal with it passively in order to avoid disputes and troubles.

Second, foreign population is managed by multiple departments, and the work often requires coordination and cooperation among different departments.⁴⁷⁷ A small issue may require a lot of manpower and material resources. Therefore, in order to reduce work pressure, many management departments, especially grassroots management departments, do not enforce actively.

Third, the current laws and regulations, management systems, and management techniques are inadequate in practice. As discussed before, there are loopholes in laws and regulations, or lack of cooperation between management departments, or insufficient management techniques as well as well-trained management personnel. These practical factors have caused some management departments not to enforce actively.

VIII CONCLUSION

This chapter provides a comprehensive and detailed analysis of the current situation of illegal economic immigration in China, including the definition of illegal economic immigration in the context of China, the number and characteristics of illegal economic immigrants, and the reasons they immigrate to China illegally. Through examining the regulatory framework, we can clearly understand how China currently deals with this issue. Policy, law, management departments, and the implementation situation were analysed, and the interviews were mainly reflected in this part. The problems of the current regulatory framework were discussed. Finally, the reasons why these problems exist in China's context were also analysed.

⁴⁷⁶ 李玉华 [Li Yuhua] and 焦娜 [Jiao Na], 《公安机关对在华外国人执法规范化研究》 [‘Research on the Standardisation of Law Enforcement by Public Security Organs on Foreigners in China’] (2020) 36 (05) 中国人民公安大学学报 (社会科学版) *Journal of People's Public Security University of China (Social Science Edition)* 30-40.

⁴⁷⁷ 张惠德 [Zhang Huide], 刘宏斌 [Liu Hongbin] and 曾范敬 [Zeng Fanjing], 《在华外国人管理行政协调机制研究》 [‘Research on the Administrative Coordination Mechanism for the Management of Foreigners in China’] (2014) 16 (05) 云南行政学院学报 *Journal of Yunnan Administration Institute* 105-110.

CHAPTER FOUR: ILLEGAL ECONOMIC IMMIGRATION IN THE INTERNATIONAL COMMUNITY

I INTRODUCTION

This chapter starts by examining how the international community deals with illegal economic immigration. It does it in two ways—by strengthening domestic laws and by furthering international cooperation. (The study will give recommendations within this scope in Chapter Five.) The chapter then gives introduction on the regulation of illegal economic immigration in the United States, Europe, Australia, and Japan. However, because these countries are quite different from China in terms of economic and political systems and traditional social culture, the regulation of illegal economic immigration in these countries is only for reference. After that, the chapter takes Singapore and Russia as models.

Russia and China have been chosen as models because of certain similarities with China that enables certain policy lessons for China. For example, Singapore recognises that the protection of illegal economic immigrants is an important consideration when formulating legislation and Russia has achieved remarkable success in international cooperation.

II THE REGULATION OF ILLEGAL ECONOMIC IMMIGRATION BY THE INTERNATIONAL COMMUNITY

The regulation of illegal economic immigration by the international community can be divided into two types. The first is state governance, including external and internal governance, and the second is international cooperation—that is, the coordination of immigration policies and cooperation between receiving and sending countries.

A State Governance of Illegal Economic Immigration

1 The External Governance of Illegal Economic Immigration by the State

The external governance of illegal economic immigration by the State refers to the measures taken by the receiving country to solve the problem from the source—such as strengthening

and extending border controls, expanding legal immigration channels, and restricting the conditions of asylum seekers.⁴⁷⁸

a) Strengthening and Extending Border Controls

Strengthening border controls is the primary measure of external governance of illegal economic immigration in many countries. For example, after terrorist attacks in Europe, a general visa system was introduced in 1986 for all non-EU countries. As part of the new system, fingerprint checks were implemented and border controls strengthened.⁴⁷⁹ In Germany—through strict review of entry visas, work permit applications, and large amounts of human and material resources invested in border controls—some foreigners can be prevented from going abroad.⁴⁸⁰ In June 2013, to cut off the wave of illegal immigration, the United States Senate passed the Immigration Reform Bill and planned to add 20,000 enforcement personnel to the US–Mexico border, build a border wall of more than 1,100 kilometres, and invest heavily in high-tech detection equipment. The budget for this was as high as USD22 billion.⁴⁸¹

Extending border controls refers to the deployment of domestic border patrol to the source countries and transit countries of illegal immigrants through international cooperation. Its purpose is to improve border-control capabilities and thus stop the influx of illegal immigrants from source and transit countries.⁴⁸² Among EU countries, for example, high-tech inspections are applied to the border-control system, including the Coastal Patrol Network,⁴⁸³ the European Surveillance System for Borders,⁴⁸⁴ and an entry-and-exit system for third-country nationals entering or leaving EU countries,⁴⁸⁵ to conduct a risk analysis of illegal immigration. The United States signed pre-inspection agreements with Ireland and Canada, sent personnel to the ports of the above countries, and worked with the migration administration of the host country

⁴⁷⁸ Guofu Liu, ‘Perspectives on International Approaches to Deal with Irregular Migrants’ (2016) 32(1) *Tribune of Study* 56–60.

⁴⁷⁹ Kristof Tamas and Joakim Palme, *Globalizing Migration Regimes: New Challenges to Transnational Cooperation* (Routledge, 2016).

⁴⁸⁰ John Whalley and Eric Ng, ‘Visas and Work Permits: Possible Global Negotiating Initiatives’ (2008) 3 *The Review of International Organizations* 259–85.

⁴⁸¹ 蒋旭峰[Jiang Xufeng], 《美移民改革的经济账》 [‘The Account of American Immigration Reform’] (10 July 2013).

⁴⁸² Liu (n456).

⁴⁸³ Basil Germond, ‘From Frontier to Boundary and Back Again: The European Union’s Maritime Margins’ (2010) 15(1) *European Foreign Affairs Review* 39–55.

⁴⁸⁴ Axel Bürkle and Barbara Essendorfer, ‘Maritime Surveillance with Integrated Systems’ (Research Report, 2010 International Waterside Security Conference, 3–5 November 2010).

⁴⁸⁵ Steve Peers, *EU Justice and Home Affairs Law* (Oxford University Press, 2011).

to identify the authenticity and validity of the documents held by the people who intended to go to the United States from the port and input their identity information to the database centre. If people not allowed to enter or those who do not comply with the procedures are found, they are handed over to the local migration administration to reduce the cost of repatriation.⁴⁸⁶

b) Expanding Legal Immigration Channels

Some countries have expanded legal immigration channels and allowed temporary immigrants, mainly seasonal immigrants. This was done to meet the demand for labour in certain industries within certain periods and reduce the living space of illegal immigrants.⁴⁸⁷ Seasonal workers account for most temporary workers admitted by European countries.⁴⁸⁸ They can only work continuously for a period of less than one year, must leave the country for one month each year, and cannot choose their work freely.⁴⁸⁹ For example, Italy had agreements with more than 20 countries for temporary workers, especially for seasonal agricultural workers.⁴⁹⁰ In France, foreign workers occupying seasonal jobs arrive and work under two main programs or mechanisms: seasonal workers and posted workers.⁴⁹¹ The foundations of the seasonal work program were laid in the period after 1945. It allowed foreigners to work in France for six months out of 12 consecutive months.⁴⁹² The residence permit could be renewed the following year if the migrant returned to his/her origin country in the meantime. In 2006, the seasonal work program was redesigned to allow foreigners with a work contract of under six months to apply for a special seasonal worker residence permit that could last up to three years and that could be renewed.⁴⁹³ Moreover, many countries provide convenient conditions for international students to work legally, such as allowing them to work part-time during their

⁴⁸⁶ 朱慎之[Zhu Shen zhi], 《美国反偷渡及非法移民管理做法与启示》[‘American Anti-Smuggling and Illegal Immigration Management Practices and Enlightenment’] (2012) 5 *Public Security Journal* 68–72.

⁴⁸⁷ Manolo Abella, ‘Policies and Best Practices for Management of Temporary Migration’ (Symposium Paper, International Symposium on International Migration and Development, 28–30 June 2006).

⁴⁸⁸ Liu (n456).

⁴⁸⁹ Ibid.

⁴⁹⁰ Abella (n487).

⁴⁹¹ In the EU, a ‘posted worker’ is an employee who is sent by his/her employer to carry out a service in another EU country temporarily.

⁴⁹² As a part of this program, several bilateral agreements were signed—for example, the French–Tunisian agreement and the French–Moroccan agreement in 1963, the bilateral agreement with Tunisia in 1988, and the bilateral agreement with Poland in 1992. Since 1976, a circular has annually fixed the quota of seasonal workers by region. In 1984, a decree was also signed to implement the principle of the applicability of ‘the national and regional employment situation’.

⁴⁹³ Anna López-Sala, et al, ‘Seasonal Immigrant Workers and Programs in UK, France, Spain and Italy’ (Working Paper Series, Temporary versus Permanent Migration, Temper EU Project, September 2016).

studies and to apply for visa extensions or work visas after they complete their studies and their visas are about to expire. This provides convenient conditions for them to obtain local work experience or apply for skilled migrant visas.⁴⁹⁴ For example, the F1 student visa in the United States generally entitles the recipient to up to one year of post-completion practical training. Authorisation for this type of practical training may be granted for a maximum of 12 months and starts once a student has graduated or completed the course of study. The temporary graduate visa (subclass 485) in Australia, as another example, is for international students who have recently graduated with a degree from an Australian institution. It is usually between two and four years depending on the qualification and allows graduates to live, work, and study in Australia temporarily.

c) Restricting the Conditions of Asylum Seekers

Many countries severely restrict the conditions for people to apply for refugee status, seeking to prevent them from turning illegal immigration acts into legal immigration acts in the name of seeking asylum.⁴⁹⁵ For example, in 2001, after the September 11 terrorist attacks on the United States, Canada replaced its 1976 Immigration Act with the Immigration and Refugee Protection Act. The new Act contains detailed stipulations regarding ineligibility and stipulates that an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.⁴⁹⁶ Japan, although it became a contracting party to the 1951 *Convention Relating to the Status of Refugees* and the 1967 *Protocol Relating to the Status of Refugees* in 1982, has a strict asylum policy and only 11,754 asylum applications were approved during the 30 years from 1982 to 2011, an average of 392 per year.⁴⁹⁷ Since 1995, Australia, as another example, no longer accepts refugee claims by people seeking shelter from enforcement of the one-child policy.⁴⁹⁸

⁴⁹⁴ Liu (n456).

⁴⁹⁵ Penelope Mathew, 'Conformity or Persecution: China's One Child Policy and Refugee Status' (2000) 23(3) *University of New South Wales Law Journal* 103–34.

⁴⁹⁶ *Immigration and Refugee Protection Act*, SC 2001, c 27, s 18.

⁴⁹⁷ Liu (n456).

⁴⁹⁸ Mathew (n495).

2 *The Internal Governance of Illegal Economic Immigration by the State*

The internal governance of illegal economic immigration by the State refers to measures taken by the receiving country to strengthen residence management, severely punish employers who employ illegal economic immigrants, detain and repatriate illegal economic immigrants, assist voluntary return, and legalise illegal economic immigrants, thereby eliminating or reducing illegal economic immigrants within the country.⁴⁹⁹

a) Strengthen Residence Management

Some countries have strengthened residence management for immigrants to ensure that they stay legally and reduce the possibility of illegal residence.⁵⁰⁰ For example, in Germany, foreigners are obliged to register with the residents' registration office and re-register within two weeks when moving to a new city.⁵⁰¹ The Federal Customs Service and the Federal Employment Agency are jointly responsible for the management of illegal employment and illegal residence, and they monitor foreign labourers who have obtained residence and work permits.⁵⁰² In Italy, the 1998 *Provisions Governing Immigration and Regulations Concerning the Status of Foreigners* stipulates that the duration of the residence permit is that foreseen by the entry visa, subject to the limits established by this law or under the international agreements and conventions currently in force. In any case, its duration cannot be: a) longer than three months, for visits, business, and tourism; b) longer than six months for seasonal work, or nine months for seasonal work in the sectors that require such extension; c) longer than one year, concerning the attendance of a duly certified course of study or training course—it can, however, be renewed annually for courses lasting several years; d) longer than two years for self-employed workers, for permanent employment and family reunions; e) longer than the duration of the documented needs, in the other cases allowed by this law or the implementation regulations. It also stipulates that the residence permit is issued, renewed, or converted not later than 20 days after the date on which the relative application was presented—provided the application meets the requirements and conditions foreseen by this law and by the

⁴⁹⁹ Liu (n456).

⁵⁰⁰ Jan Niessen, et al, 'EU and US Approaches to the Management of Immigration' (Research Report, Ivo Magnée and Eke Gerritsma Forum – Institute for Multicultural Development, May 2003).

⁵⁰¹ Philip L Martin, 'Germany: Managing Migration in the 21st Century' (Working Paper, Institute of European Studies, 5 January 2002).

⁵⁰² Ibid.

implementation regulations for the residence permit requested or, failing this, for another type of permit to be issued under this law.⁵⁰³

b) Severely Punish Employers Who Employ Illegal Economic Immigrants

Severe punishment of the employers of illegal immigrants will make it difficult for illegal economic immigrants to find jobs and obtain financial benefits, which may force foreigners to stop illegal immigration activities or encourage illegal economic immigrants return to their home country voluntarily. The more severe the punishment, the lower the incentives either to be an illegal immigrant or to employ illegal immigrants. For example, in Germany, according to the *Act to Combat Illegal Employment* in 2004, the labour agency, tax department, and immigration administration should share information and collaborate to combat illegal workers and promote legal employment. German companies that violate the Act cannot accept purchase orders from government departments within three years and are fined up to 500,000 euro.⁵⁰⁴ In Italy, the 2002 *Changes in Regulations on the Matter of Immigration and Asylum* stipulates that an employer who employs foreign workers who lack a residence permit, or whose permit has expired without an application being made for its renewal within the time limit, or has been revoked or cancelled, is punished by detention for three months to one year and a fine of 5,000 euro for each worker employed.⁵⁰⁵

c) Detain and Repatriate Illegal Economic Immigrants

The immigration departments of some countries have great powers to detain and repatriate illegal economic immigrants. Many foreigners are detained and repatriated without trial after they enter the country, which forms a powerful shock and deterrent to illegal economic immigrants.⁵⁰⁶ For example, in France, major reforms were first passed in 1980 in immigration, and deportation provisions were added. Police and immigration officers have greater powers in verifying the authenticity of the necessary documents, detaining undocumented aliens, and deporting migrants who have arrived illegally. Foreigners who do not meet the requirements

⁵⁰³ *Provisions Governing Immigration and Regulations Concerning the Status of Foreigners*, Italy: Law No. 40 of 1998.

⁵⁰⁴ *Act to Combat Illegal Employment* (Schwarzarbeiterbekämpfungsgesetz, SchwarzArbG) Section 10 (1) 2004.

⁵⁰⁵ *Changes in Regulations on the Matter of Immigration and Asylum*, Italy: Law No. 189 of 2002.

⁵⁰⁶ Virginie Guiraudon, 'Immigration Policy in France' (01 January 2001); Aster Yong, 'Foreign Labour Employment Policy and Change in Australia, Singapore and Malaysia' (2006) 1(1) *Journal of Business System Governance Ethics* 25–35.

for an extension of stay and illegal entry foreigners can be deported.⁵⁰⁷ In 1986, the deportation of illegal immigrants could be executed by administrative order, not necessarily through judicial procedure.⁵⁰⁸ In Australia, under the *Migration Act 1958*, immigration officials have no choice but to detain persons who arrive without a visa, or persons who arrive with a visa and subsequently become unlawful because their visa has expired or been cancelled.⁵⁰⁹

d) Assist Voluntary Return

This means that the destination country of illegal economic immigrants cooperates with the source country, the transit country, and the international organisations to implement measures, such as subsidies and deportation exemptions, to encourage and assist illegal economic immigrants to return to their home country voluntarily.⁵¹⁰ Assisting voluntary return enables the destination country to deal with the issue of illegal immigration humanely and decently. For example, after the 1973 oil crisis, the German government completely stopped recruiting foreign workers and adopted the voluntary repatriation measure to deal with foreign workers.⁵¹¹ In 1977, France provided subsidies to encourage foreign immigrants to return to their home countries.⁵¹²

e) Legalise Illegal Economic Immigrants

The legalisation of illegal economic immigrants means that the destination country grants legal status to them. It guides illegal economic immigrants to stay and work in line with the requirements of destination countries and fully solves the problem of illegal economic immigrants. It can be an ongoing process or operate for a particular period. It can be done either individually or collectively. For example, Italy grants frequent mass amnesty to regularise illegal immigrants. In 2003, it granted legal status to 630,000 illegal immigrants,⁵¹³ which set the record for the largest number of legalised illegal immigrants in the shortest time through the simplest procedure in the history of Europe.⁵¹⁴ In November 2014, President Obama

⁵⁰⁷ Virginie Guiraudon, 'Immigration Policy in France' (1 January 2001).

⁵⁰⁸ Carine Guerassimoff, 'Paradoxes of Republican Model: A Study of French Immigration Policy' (2003) 4 *Chinese Journal of European Studies* 119–39.

⁵⁰⁹ *Migration Act 1958* (Cth).

⁵¹⁰ Liu (n456).

⁵¹¹ 陈于青[Chen Yuqing], 《移民带给德国的机遇与挑战》 ['Opportunities and Challenges brought to Germany by Immigrants'] (2013) 1 宜宾学院学报 *Journal of Yibin University* 96–100.

⁵¹² Guerassimoff (n508).

⁵¹³ Liu (n456).

⁵¹⁴ Ibid.

granted temporary legal status and work permits to almost five million illegal immigrants. More than four million illegal immigrants who were the parents of US citizens or legal permanent resident children would receive new legal status under Obama's executive action, if they had been living in the country for at least five years, had paid back taxes, and passed a criminal background check.⁵¹⁵

B International Cooperation

International cooperation refers to the close cooperation between the destination country and the source country and/or the transit country. Countries adopt measures such as precautions, good neighbour cooperation, and common rules for managing the return of illegal migrants to eliminate or reduce the causal factors of illegal economic migration, promote legal economic migration, and tackle the problem of illegal economic migration at the root.

1 Precautions

Precaution means that the destination country strengthens the migration management capacities of some countries with assistance, business, investment funds, diplomacy, training, and other measures, and focuses on the prevention of illegal economic immigration.⁵¹⁶ For example, the IOM implemented the Research and Policy Dialogue Initiative on Migration and Remittances in Ukraine in 2013.⁵¹⁷ From a long-term perspective, the problem of illegal economic migration should be resolved through precautions rather than extending border control. Since 2006, the EU has signed bilateral labour agreements with regions such as Hong Kong and Macau, while countries such as Sri Lanka and Albania⁵¹⁸ promote legal migration and prevent illegal migration.

2 Good Neighbour Cooperation

Good neighbour cooperation is an important diplomatic method to prevent regional turmoil, promote regional stability and development, and reduce illegal economic migration.⁵¹⁹ It

⁵¹⁵ Barack Obama, 'Obama to Give Legal Status to almost 5 Million Undocumented Immigrants' (20 November 2014).

⁵¹⁶ Mohammad Amin and Aaditya Mattoo, 'Can Guest Worker Schemes Reduce Illegal Migration?' (Research Paper, January 2006).

⁵¹⁷ IOM, 'Migration as an Enabler of Development in Ukraine' (2016).

⁵¹⁸ Adam S Chilton and Eric A Posner, 'Why Countries Sign Bilateral Labor Agreements' (2018) 47(1) *The Journal of Legal Studies* 45–88.

⁵¹⁹ Chien-peng Chung, *China's Multilateral Co-operation in Asia and the Pacific: Institutionalizing Beijing's good Neighbour Policy* (Routledge, 2010).

reflects the country's comprehensive view of illegal economic migration. For instance, the total population of the EU and its Mediterranean neighbours is virtually the same, but in terms of energy consumption, the average level of the EU is four times that of its neighbours.⁵²⁰ As a result, the EU is facing huge pressure from illegal economic immigration from neighbouring countries. According to the report *Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours* by the Commission of the European Communities in 2003, the EU should help reinforce neighbouring countries' efforts to combat illegal migration and to establish efficient mechanisms for returns, especially illegal transit migration, as well as strengthening all forms of economic development.⁵²¹ From 2007 to 2013, the European Neighbourhood and Partnership Instrument (ENPI) had a budget of 11.2 billion euros over seven years.⁵²² The European Neighbourhood Policy has made significant progress in reducing the uneven development of immigration pressure.⁵²³

3 Common Rules for Managing the Return of Illegal Migrants

Owing to the international movement of illegal economic immigrants, relevant countries need to take concerted measures to manage the return of illegal economic migrants to avoid inefficiency.⁵²⁴ Implementation of this measure requires mutual recognition of expulsion orders by the relevant countries, and a joint effort to obtain cooperation from the source country and the transit country. For example, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals lays down common standards and procedures for the return of non-EU nationals who are staying in the EU.⁵²⁵ The Return Directive provides an appropriate period of between seven and 30 days for an individual's voluntary departure. During this period, to avoid the risk of absconding, member states can set requirements such as regular reporting to the authorities, the deposit of an adequate financial

⁵²⁰ Mart Laar, *The Power of Freedom – Central and Eastern Europe after 1945* (Centre for European Studies, 2010).

⁵²¹ Commission of the European Communities, 'Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours' (11 March 2003).

⁵²² Egidio Canciani, 'European financial perspective and the European Neighbourhood and Partnership Instrument' (2007) *Mediterranean Politics* 148–52.

⁵²³ Commission of the European Communities (n521).

⁵²⁴ Jean Pierre Cassarino, 'The Conditions of Modern Return Migrants' (2008) 10(2) *International Journal on Multicultural Societies* 95–105.

⁵²⁵ Emanuela Canetta, 'The EU Policy on Return of Illegally Staying Third-Country Nationals' (2007) 9(4) *European Journal of Migration and Law* 435–50.

guarantee, submission of documents, or the obligation to stay at a certain place. If by the end of the period the person does not leave, a repatriation order can be issued and this can lead to coercive measures, including imprisonment (detention) for six months, which can be extended another 12 months. Those subject to expulsion can also be barred from any application to re-enter for up to five years or for longer if the third-country national represents a serious threat to public policy, public security, or national security.⁵²⁶

C Inspirations of the International Community

Although the performance and influence of illegal immigration in different countries and regions are different, and the governance of illegal immigration in different countries is also not the same, some lessons can be drawn for China regarding the governance of illegal economic immigration.

First, the governance of illegal economic immigration is not limited to the law but also relies on political and economic means. Although the law is a powerful and effective means, it cannot fully tackle the problem of illegal economic immigration at the root. Political and economic means are indispensable for the management of illegal economic immigration. The realisation of the external governance of the State and international cooperation through political dialogue can help promote lawful economic migration and tackle the problem of illegal economic immigration at the root.⁵²⁷

Second, it is difficult for the receiving country to solve the problem of illegal economic immigration on its own. It is necessary to strengthen cooperation with the sending country and the transit country to achieve collaborative governance. Since the problem of illegal economic immigration involves two or more countries, the destination country must consider relevant countries rather than just itself.⁵²⁸

The international community has important implications for China. The following section will briefly discuss the regulation of illegal economic immigration in the United States, Europe, Australia, and Japan as a reference. After that, the measures of two representative countries will be summarised: Russia and Singapore. These two countries are of great enlightening significance for China regarding the management of illegal economic immigration.

⁵²⁶ Sonia McKay, Eugenia Markova and Anna Paraskevopoulou, *Undocumented Workers' Transitions: Legal Status, Migration, and Work in Europe* (Routledge, 2012).

⁵²⁷ More details are discussed in Chapter Five.

⁵²⁸ More details are discussed in Chapter Five.

III THE REGULATION OF ILLEGAL ECONOMIC IMMIGRATION IN THE UNITED STATES, EUROPE, AUSTRALIA AND JAPAN

A The United States

As the world's largest economy, the United States is one of the most desirable countries for immigrants, and it is also the country with the most illegal immigrants.⁵²⁹ In order to strengthen the governance of illegal immigration, the United States enhances border management externally, improves law enforcement internally, and at the same time continuously introduces policies based on actual conditions to help legalise illegal immigrants.⁵³⁰

In the United States, it is the federal government that enforces immigration affairs. Therefore, the US federal government has played a leading role in the governance of illegal immigration. The following measures have been taken in the process of governance.

- Reform immigration management institutions. Before 9/11, the agency responsible for illegal immigration management in the United States was the Immigration and Naturalization Service under the Department of Justice. This agency was responsible for handling immigration applications, entry and exit of foreigners, border patrols, arrest and deportation of illegal immigrants, refugee review, punishment of illegal employment and other matters.⁵³¹ The agency ceased to exist under that name on March 1, 2003, when most of its functions were transferred to three new entities – the Citizenship and Immigration Services, the Immigration and Customs Enforcement, and the Customs and Border Protection – within the newly created Department of Homeland Security, as part of a major government reorganisation following the September 11 attacks of 2001.⁵³²
- Carry out law enforcement at the domestic factories. The United States attaches great importance to law enforcement at the domestic factories, with the aim of eliminating

⁵²⁹ Abby Budiman, 'Key Findings About U.S. Immigrants' *Pew Research Centre* (Web Page, 20 August 2020) <<https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/>>.

⁵³⁰ 文雯 [Wen Wen], 《9/11 事件后美国非法移民治理研究》 ['Study on the Governance of Illegal Immigrants in the United States after September 11 Attacks'] (西北师范大学 [Northwest Normal University], 2020).

⁵³¹ 王家乐 [Wang Jiale], 《9/11 事件后国家安全因素对美国移民政策的影响研究》 ['A Study of the Impact of National Security on American Immigration Policy after 9/11 Terrorist Attacks'] (东北师范大学 [Northeast Normal University], 2018).

⁵³² Ibid.

economic incentives and making illegal immigrants leave the country.⁵³³ The Immigration Reform and Control Act imposes strict penalties on employers who deliberately hire illegal immigrants.⁵³⁴ However, due to strong political pressure from interest groups, industrial organisations, and members of Congress, United States Citizenship and Immigration Services has actually adopted a negative attitude to deal with employers who hire illegal immigrants, and instead focussed law enforcement on combating illegal immigrants themselves, which aroused fierce controversy.⁵³⁵

- Build border isolation facilities. The United States government uses methods such as building border fences, installing electronic detection equipment, and launching aerial reconnaissance to deter illegal entry activities.⁵³⁶

Since the United States government initially implemented a loose policy of free immigration, immigrants almost enter and exit out of the border unrestricted. Therefore, after the transition from a free immigration policy to a restrictive immigration policy, there are many illegal immigrants staying in the United States. The governance of illegal immigration in the United States can be divided into two aspects: one is to strengthen external border management to prevent the entry of potential illegal immigrants; the other is to strengthen internal social control to prompt existing illegal immigrants to leave.⁵³⁷ However, due to political reasons, the immigration policy of the United States is always changing, and many policy gaps have been created during this period, which has made it the country with the most illegal immigrants in the world.⁵³⁸

In addition, building walls is a kind of border protection.⁵³⁹ In the United States, President Trump's proposal for a 'big beautiful wall' covering the entire border is only the most extreme version of an enforcement strategy that has relied primarily on border security to reduce illegal

⁵³³ 文雯 [Wen Wen] (n530).

⁵³⁴ *Immigration Reform and Control Act 1986*, S. 1200 (99th).

⁵³⁵ 文雯 [Wen Wen] (n530).

⁵³⁶ Jenna M Loyd and Alison Mountz, *Boats, Borders, and Bases: Race, the Cold War, and the Rise of Migration Detention in the United States* (University of California Press, 2018).

⁵³⁷ 文雯 [Wen Wen] (n530).

⁵³⁸ Ibid.

⁵³⁹ Victoria Rietig and Christian Bilfinger, 'Walls Against Migration? About Perceived Truth in the U.S. Migration Debate and the Effectiveness of Border Protection Measures' (Report, 2017).

migration to the United States.⁵⁴⁰ Walls and border protection measures function on two levels. For one, they can block existing migration flows; and secondly, they can act as deterrents to potential future migrants, which means that they can – at least in the short term – help reduce migration figures.⁵⁴¹ It seems that walls can successfully curb illegal migration, but that is not necessarily the case.⁵⁴² There are three factors making it difficult to obtain a clear picture about the true efficacy of walls. First, the effect of walls cannot be measured unequivocally. Even if apprehensions of illegal migrants decline following wall construction and investments in border protection (as happened in the United States in the 1990s), other circumstances may have played a role, such as an economic recession (like the 2008/2009 recession in the United States) or changing living conditions in the countries of origin (for instance in Mexico in recent decades).⁵⁴³ Second, a dilemma for border protection is that more border patrol agents can conduct more arrests even if the number of border crossing attempts remains relatively constant.⁵⁴⁴ Paradoxically, greater investment in border patrol personnel can even create the impression of more rather than less illegal immigration as more arrests are recorded.⁵⁴⁵ Thirdly, illegal immigration is not necessarily linked merely to illegal entry. As illustrated by the numerous visa overstay in the United States, migrants can enter a country legally, for instance on a tourist or temporary work visa, and then stay on in the country once the visa has expired.⁵⁴⁶ Border protection and wall construction have no effect on this form of illegal immigration. Moreover, Walls and enhanced border protection measures bring with them a series of problems and unintended side effects.⁵⁴⁷ For instance, it can cause circular migration to turn into permanent migration.⁵⁴⁸ For decades, Mexican immigration was characterised by seasonal or circular labour migration; but the more difficult it became to cross the border, the more

⁵⁴⁰ Edward Alden, 'Is Border Enforcement Effective? What We Know and What It Means' (2017) 5(2) *Journal on Migration and Human Security* 481-90.

⁵⁴¹ Rietig and Bilfinger (n539).

⁵⁴² Ibid.

⁵⁴³ 杜娟 [Du Juan], 《美墨边境非法移民问题历史溯源》 ['Tracing the History of Illegal Migration at the U.S.-Mexico Border'] (2018) 3 学术探索 *Academic Exploration* 40-44.

⁵⁴⁴ Douglas S Massey, Jorge Durand and Karen A Pren, 'Why Border Enforcement Backfired' (2016) 121(5) *American Journal of Sociology* 1557-1600.

⁵⁴⁵ Ibid.

⁵⁴⁶ Lucy Rodgers and Dominic Bailey, 'Trump Wall-All You Need to Know about US Border in Seven Chart' (BBC News, 21 January 2019).

⁵⁴⁷ Rietig and Bilfinger (n539).

⁵⁴⁸ Ibid.

Mexicans and their families felt inclined to settle in the United States permanently.⁵⁴⁹ Besides, it can also result in smugglers increasing their prices and adapting their business model.⁵⁵⁰ According to estimates, the average price for a migrant to be smuggled from Mexico to the United States of around 500 U.S. dollars in the 1980s had risen to almost 2,500 U.S. dollars by the mid-2000s.⁵⁵¹

As discussed above, walls can indeed be an effective symbol of deterrence, and therefore helps to temporarily curb migration. However, they cannot resolve the problem of illegal immigration in the long term or completely. Moreover, they cause serious problems and undesirable side effects.

B The European Union

As an alliance between countries, the main characteristic of the EU's illegal immigration governance is its extensive international coordination and cooperation.⁵⁵² Compared with other regions, the EU has closer cooperation in the governance of illegal immigration, which is mainly manifested in strengthening the management of the common external border, and relaxing the internal population flow.⁵⁵³

- Cooperate with the sending countries. This includes short-term policies, such as joint judicial action and readmission agreements,⁵⁵⁴ as well as long-term policies, such as strengthening economic assistance to the sending countries, and providing legal labour quota.⁵⁵⁵

⁵⁴⁹ Ibid.

⁵⁵⁰ Catherine Rampell, 'Why Are Mexican Smugglers' Fees Still Rising?' (Web Page, 18 May 2009) <<https://economix.blogs.nytimes.com/2009/05/18/the-rise-in-mexican-smugglers-fees/?mtrref=www.google.com.au&gwh=DBECE4285E71AC802A119C7A13C49B8C&gwt=pay&assetType=PAYWALL>>.

⁵⁵¹ Ibid.

⁵⁵² Elenora Colombo, 'EU Databases and the Exchange of Information to Combat Illegal Immigration' (2014) 4(3) *European Criminal Law Review* 236–47.

⁵⁵³ 陈积敏[Chen Jimin], 《欧盟非法移民治理及其困境》['The Governance of EU Illegal Immigration and Its Dilemma'] (2016) 18(5) 中共中央党校国际战略研究院 *International Strategic Research Institute of Central Committee Party School* 20 – 26.

⁵⁵⁴ Marion Panizzon, 'Readmission Agreements of EU Member States: A Case for EU Subsidiarity or Dualism?' (Working Paper, Swiss National Centre of Competence in Research, September 2012).

⁵⁵⁵ Iván Martín and Alessandra Venturini, 'A Comprehensive Labour Market Approach to EU Labour Migration Policy' (2015) 7 *Migration Policy Centre* 1–12.

- Improve relations with the neighbouring countries. The European neighbourhood policy was put forward to strengthen communication with the neighbouring countries and improve the surrounding environment.⁵⁵⁶ In particular, the neighbouring countries that have applied to join the EU are considered as the focus of the European neighbourhood policy.⁵⁵⁷ While strengthening communication, it also gives policy relaxation and even economic assistance to the neighbouring countries.⁵⁵⁸
- Strengthen the border management. The pre-frontier control implemented by the EU means that border inspections are expanded beyond the borders of the EU, such as airports and ports in other countries.⁵⁵⁹ The EU established Frontex to allocate funds and deploy European border guards.⁵⁶⁰ Moreover, the EU has also increased the research and application of high-tech, invested heavily to improve fingerprint input devices, biometric devices and other technical equipment, and set up relevant information networks, in order to improve the border management.⁵⁶¹
- Restrict population movements in new member states. Although the EU implements a highly accommodating population movement policy, it requires the transitional periods of up to seven years to open its borders to newly joined member states, in order to prevent illegal immigrants from entering the EU from newly joined member states.⁵⁶²
- Jointly crack down on smuggling and illegal employment. It includes not only carrying out joint operations against illegal immigrants themselves, but also imposing severe

⁵⁵⁶ Edzard Wesselink and Ron Boschma, 'European Neighbourhood Policy: History, Structure, and Implemented Policy Measures' (Report, Utrecht University Repository, 2016).

⁵⁵⁷ 陈积敏[Chen Jimin] (n553).

⁵⁵⁸ Ibid.

⁵⁵⁹ 周烨[Zhou Ye] and 唐超[Tang Chao], 《欧盟边境安全风险防控模式的借鉴》 ['Lessons Learned from the EU Border Security Systems'] (2018) 31(4) 广西警察学院学报 *Journal of Guangxi Police College* 77 – 83.

⁵⁶⁰ Helena Ekelund, 'The Establishment of FRONTEX: A New Institutional Approach' (2014) 2(36) *Journal of European Integration* 99–116.

⁵⁶¹ 李晓蕊 [Li Xiaorui], 《非传统安全视角下的中国入境非法移民问题研究》 ['Research on China's Illegal Immigration Issues from the Perspective of Non-traditional Security'] (上海社会科学院 [Shanghai Academy of Social Sciences], 2016).

⁵⁶² Martin Kahanec and Klaus F Zimmermann, 'Migration in an Enlarged EU: A Challenging Solution' (Economic Paper, European Commission, 2009).

economic penalties on individuals or companies that employ illegal immigrants, so as to cut off the channels for illegal immigrants to enter and earn a living.⁵⁶³

On the one hand, illegal immigration governance of the EU is gradually moving towards convergence, and the scope of cooperation is also expanding. Countries no longer regard illegal immigration as the internal affairs of a single country, but as difficulties and challenges faced by the EU together.⁵⁶⁴ On the other hand, however, because the illegal immigration governance has always faced the conflict between the EU's overall interests and the interests of various member states, some policies cannot be fully implemented, and many countries still act on their own interests.⁵⁶⁵ For example, in 2015 and 2016, more than one million refugees and migrants from Syria and other countries submitted asylum applications to the EU, and the Europe's Migration Crisis broke out.⁵⁶⁶ After the Migration Crisis, a prominent feature within the EU is that the people's attention to immigration issues has continued to rise, and this issue has once become EU citizens' top concern.⁵⁶⁷ Affected by factors such as economic status, education level, gender, place of residence, and political orientation, EU citizens have quite different attitudes towards immigration issues.⁵⁶⁸ For instance, people with low incomes and relatively backward living standards often think that the arrival of refugees and immigrants will compete local job opportunities with them and threaten their living standards, so their attitudes towards immigrant groups are more negative.⁵⁶⁹ Moreover, the immigration tradition also affects people's attitudes towards immigration. Germany, which received a large number of refugees and immigrants after World War II, expressed sympathy and welcome to the refugees at the beginning of the Migration Crisis, and it is also the country that received the largest number of

⁵⁶³ Christal Morehouse and Michael Blomfield, 'Irregular Migration in Europe' (Report, Migration Policy Institute, 2011).

⁵⁶⁴ 陈积敏[Chen Jimin] (n553).

⁵⁶⁵ Ibid.

⁵⁶⁶ 关欣[Guan Xin] and 房乐宪[Fang Lexian], 《欧洲民意对欧盟移民与庇护政策的影响——基于欧洲移民危机的分析》 ['The Impact of Public Opinion on EU Migration and Asylum Policy-Based on the Analysis of the Europe's Migration Crisis'] (2020) 6 和平与发展 *Peace and Development* 91 - 104.

⁵⁶⁷ Ibid.

⁵⁶⁸ James Dennison, 'Public Attitudes on Migration : Rethinking How People Perceive Migration : An Analysis of Existing Opinion Polls in the Euro-Mediterranean Region' (Technical Report, International Centre for Migration Policy Development, 2018).

⁵⁶⁹ Rafaela M Dancygier and Michael J Donnelly, 'Sectoral Economies, Economic Contexts, and Attitudes toward Immigration' (2013) 75(1) *The Journal of Politics* 17-35.

refugees.⁵⁷⁰ However, some EU member states without this tradition, such as Hungary and Poland, are very reluctant to receive refugees and immigrants.⁵⁷¹

In September 2015, in order to reduce the burden on Greece and Italy, which have taken in a large number of stranded refugees, the European Commission put forward a comprehensive package of proposals which would help address the Migration Crisis that EU Member States and neighbouring countries are facing, including by tackling the root causes making people seek refuge in Europe. The new set of measures would alleviate pressure from Member States most affected by proposing to relocate 120,000 people in clear need of international protection to other EU Member States.⁵⁷² However, this legislation on emergency relocation of asylum seekers was in contradiction with the idea of many EU member states whose citizens oppose their country to receive more refugees and immigrants, such as Czech Republic, Denmark and Hungary.⁵⁷³ The opposition of the domestic people has caused these European countries to refuse to take in refugees.⁵⁷⁴ Although the European Commission has criticised these countries, this does not change their attitude.⁵⁷⁵

C Japan

Japan has always been very cautious in absorbing foreign immigrants.⁵⁷⁶ In order to maintain the integrity and unity of culture, Japan has always regarded the restriction of foreign immigration as a basic principle, and strictly restricted non-skilled immigration.⁵⁷⁷

Japan maintains a residency management system for foreigners who entered Japan, prescribes various residency qualifications in detail, and determines whether or not to approve their entry and working in Japan by examining the foreigner's status of residence, that is, the status of the

⁵⁷⁰ 关欣[Guan Xin] and 房乐宪[Fang Lexian] (n566).

⁵⁷¹ Jonas Ekblom, 'Poland, Hungary Broke EU Laws by Refusing to Host Migrants: Court Adviser' (Web Page, 31 October 2019) <<https://www.reuters.com/article/us-europe-migration-court-idUSKBN1XA1S5>>.

⁵⁷² European Parliament, 'Legislation on Emergency Relocation of Asylum-seekers in the EU' (European Parliamentary Research Service, October 2015).

⁵⁷³ European Commission, 'Member States Support to Emergency Relocation Mechanism' (Web Page, 05 February 2018) <[eu-com-sop-relocation-5-2-18.pdf \(statewatch.org\)](#)>.

⁵⁷⁴ Ekblom (n571).

⁵⁷⁵ European Commission (n573).

⁵⁷⁶ 侯松岭[Hou Songling] and 喻慧[Yu Hui], 《当代发达国家移民政策的特点》 ['Features of Immigration Policies in Contemporary Developed Countries'] (2005) 1 当代亚太 *Contemporary Asia-Pacific Studies* 57 - 61.

⁵⁷⁷ Ibid.

foreigner legally living in Japan and engaging in corresponding activities.⁵⁷⁸ Foreigners who are permitted to enter Japan engage in relevant activities within a limited range. For example, if a foreigner enters Japan for a short-term period based on visiting relatives, he/she can only engage in activities corresponding to the purpose of entry, while cannot find a job in Japan. Otherwise, he/she will be punished and even forcibly repatriated with the serious situation.⁵⁷⁹

As Japan has adopted strict restrictions on immigration, it has taken severe measures to crack down on illegal immigration, accumulated rich practical experience in repatriation, and gradually explored a set of detailed and improved repatriation systems for illegal immigrants.⁵⁸⁰

- Legal provisions are clear and specific, and the implementation procedures are detailed and improved. The repatriation of illegal immigrants is a highly procedural task. Due to the great impact of repatriation on immigrants, strict and meticulous procedures must be set up to ensure the legality and rationality of the enforcement. Immigration Control and Refugee Recognition Act has established a set of detailed procedures for the repatriation of illegal immigrants, including investigations of illegal facts, detention, examination, oral examination, application for reconsideration, enforcement of mandatory deportation orders, and it has been reflected in legal form to make officials have laws to follow, so that the various procedures of forced repatriation can be truly implemented.⁵⁸¹ The repatriation procedure of illegal immigrants in Japan is feasible and at the same time conforms to the basic requirements of the rule of law.
- The division of responsibility of the management body is clear, and the internal supervision and review mechanism is good. In terms of the management body, Japan has formed a five-level structure including the immigration police officer, the immigration inspector, the special inspector, the chief inspector, and the Minister of Justice.⁵⁸² Among them, the immigration police officer is responsible for the investigation of illegal facts and the execution of detention and repatriation, which is

⁵⁷⁸ 范芳艳 [Fan Fangyan], 《西南边境地区三非人员治理的法律问题研究》 [‘Research on the Legal Issues of Governing the Three-non Foreigners in the Southwest Border Region’] (广西师范大学 [Guangxi Normal University], 2016).

⁵⁷⁹ Ibid.

⁵⁸⁰ Ibid.

⁵⁸¹ 贾硕 [Jia Shuo], 《日本非法移民遣返制度研究》 [‘Research on Japanese Illegal Immigration Repatriation System’] (2020) 36(1) 武警学院学报 *Journal of the Armed Police Academy* 10 - 15.

⁵⁸² 田艳 [Tian Yan], 《非法移民遣返的法律制度研究》 [‘Research on the Legal System of the Repatriation of Illegal Immigration’] (辽宁大学 [Liaoning University], 2014).

the executor; the immigration inspector is responsible for reviewing whether or not foreigners meet the conditions of compulsory repatriation, and the special inspector is responsible for oral review, which are the reviewers; The chief inspector is responsible for issuing detention orders, departure orders, and compulsory repatriation orders, which is the decision maker; the Minister of Justice is responsible for reconsideration of the application, and the exemptions of the compulsory repatriation, which is the final decision maker.⁵⁸³ The formation of this structure not only clarifies the division of responsibility of the management personnel, but also forms a corresponding internal supervision and review mechanism, which reasonably separates the enforcement, review, and decision-making powers in the repatriation of illegal immigrants, and forms a supervisory and restrictive relationship between executors, reviewers, and decision makers, and effectively guarantees the reasonable exercise of internal powers.

- Illegal immigrants have adequate right of relief. The repatriation system in Japan not only guarantees the efficiency of the procedures, but also gives the illegal immigrants full right of relief, forming a unique right of relief system. Unlike many traditional immigration-based countries that provide judicial relief to illegal immigrants, Japan has given illegal immigrants two remedies: oral review and reconsideration.⁵⁸⁴ These two remedies are two-level administrative reconsideration in nature, and their advantage is that they can guarantee the right of relief and at the same time solve the problem of inefficiency caused by judicial relief.⁵⁸⁵

D Australia

Australia has an improved visa system. Australia attaches great importance to the classification of visas and divides visas into four categories, namely permanent visas, temporary visas, bridging visas and protection visas.⁵⁸⁶ In the above four categories, there are several sub-categories. For example, the permanent visas include about 40 sub-categories, such as adoption

⁵⁸³ Ibid.

⁵⁸⁴ 贾硕[Jia Shuo] (n581).

⁵⁸⁵ Ibid.

⁵⁸⁶ 王彤[Wang Tong], 《我国的外国人管理法律问题研究》 [‘Research on the Legal Issues of Foreigner Management in China’] (东北林业大学 [Northeast Forestry University], 2015).

and business skills.⁵⁸⁷ The temporary visas include about 45 sub-categories, such as business skills and graduate visa.⁵⁸⁸ So far, there are more than 100 types of visas in Australia.⁵⁸⁹

- In terms of the issuance of visas, Australia has established a visa support system, which mainly includes financial guarantee, general guarantees, nominations, visa points tests, quotas, waiting, visa processing priorities and skilled occupation list.⁵⁹⁰ The Australian government uses the visa support system to connect applicants closely with the Australian society.
- In order to maintain the living environment of the domestic people, Australia has been working on restricting the immigrant population, thus setting up immigration quotas. In other words, Australia sets up quotas based on the economic development speed and domestic labour market demand in the previous year.⁵⁹¹
- The Australian government processes visa applications in processing priority order regardless of when an application is lodged and in line with the government's policy priorities.⁵⁹² The Minister for Home Affairs has the right to arrange the processing of visa applications according to the priority order he considers appropriate.⁵⁹³ This system can ensure that people who are urgently needed can be granted visas first. At the same time, setting priority also enables applicants to understand the needs of the Australian society and the human resources market.
- The point system is an issuance method that the Australian government takes into account factors such as age, working years, education, and social status when assessing the conditions of immigrants.⁵⁹⁴ Australia sets the point for this type of immigration every year, and only those who reach the point are eligible to apply for the visa.⁵⁹⁵ In

⁵⁸⁷ Ibid.

⁵⁸⁸ Ibid.

⁵⁸⁹ 丁木兰[Ding Mulan], 《完善我国技术移民法律制度研究》 ['Research on Improving China's Legal System of Skilled Migration'] (湘潭大学 [Xiangtan University], 2016).

⁵⁹⁰ 张敏[Zhang Min], 《关于进一步完善我国签证法律制度的可行性研究》 ['Feasibility Study on Further Improving China's Visa System'] (上海交通大学 [Shanghai Jiao Tong University], 2015).

⁵⁹¹ 王彤[Wang Tong] (n586).

⁵⁹² 张敏[Zhang Min] (n590).

⁵⁹³ Ibid.

⁵⁹⁴ 张晨田[Zhang Chentian], 《中澳移民法之比较研究》 ['A Comparative Study of Chinese and Australian Immigration Laws'] (浙江大学 [Zhejiang University], 2013).

⁵⁹⁵ Ibid.

the process of applying for immigration, the applicant's employment position, working years, education level, social performance, social adaptability, language ability and other factors have corresponding points.⁵⁹⁶ This is also an important basis for the immigration department to evaluate the applicant's comprehensive quality.⁵⁹⁷

E Summary

Illegal immigration exists in many countries and regions. It is not an issue unique to China. The scope of this thesis is illegal economic immigrants, who are more likely to go to economically developed countries. In other words, economically developed countries have become the preferred destination for most illegal economic immigrants. Therefore, these countries have rich experience in governing illegal economic immigration, which can be used as reference for China. For example, the United States has rich experience and achievements in border management; The European Union has made a lot of efforts in international cooperation; Japan has a detailed repatriation system; Also, Australia has an improved visa system.

However, due to the large differences between these countries and China in terms of political systems, economic development, social environment and other factors, their governance experiences can be used as reference, but they are difficult to apply to China. Therefore, the following will discuss two countries that are more similar with China's situation: Singapore⁵⁹⁸ and Russia.⁵⁹⁹

IV THE REGULATION OF ILLEGAL ECONOMIC IMMIGRATION IN SINGAPORE

A Why Is Singapore a Good Model?

Singapore and China have many similarities. First, like China, Singapore has many neighbouring countries, and its economic level is much higher than its neighbours. This means it attracts many immigrants from neighbouring countries, including legal economic immigrants

⁵⁹⁶ 王彤[Wang Tong] (n586).

⁵⁹⁷ Ibid.

⁵⁹⁸ For discussion see Chapter Four: IV The regulation of illegal economic immigration in Singapore: A Why is Singapore a good model?

⁵⁹⁹ For discussion see Chapter Four: V The regulation of illegal economic immigration in Russia: A Why is Russia a good model?

and illegal economic immigrants, such as those from the Philippines and Bangladesh.⁶⁰⁰ Second, Singapore has imbued the Confucius values into the national consciousness, where they have developed into Asian Values.⁶⁰¹ As a result, the values in Singapore and China are similar. Third, the Chinese constitute a major migrant group to Southeast Asia; in 2017, they accounted for 74.3 per cent of the population in Singapore.⁶⁰² Moreover, the main flow of illegal migrants into Singapore in recent years is from China.⁶⁰³

By China learning the various methods people use to migrate illegally to Singapore, it can be alerted to the diversity of clandestine methods. More importantly, it reminds the Chinese government to consider illegal immigrants' lives and living conditions by learning their real living situation in Singapore. Many people take serious risks in becoming illegal migrants, behind which lie many stories of sadness and frustration. However, after they have gone through the hardships to reach the destination country, instead of reaching heaven, the reality may turn into hell. That is, they are forced to live a difficult life or suffer physical and mental torture, and often become victims.⁶⁰⁴ Hence, as well as regulating illegal migration, the legislators need to stand in the shoes of illegal migrants. They need to:

- find a more effective channel to allow legal migrants in, one that will reduce the number of illegal migrants and avoid the risks incurred;
- take more feasible measures to assist illegal migrants who are in need; and
- improve the comprehensiveness and coherence of law to integrate immigrants into the local population.⁶⁰⁵

⁶⁰⁰ Siew Hoon Tan (n104).

⁶⁰¹ 侯健 [Hou Jian] (n105).

⁶⁰² 'Population and Population Structure', *Department of Statistics Singapore* (Web Page, 24 September 2020) <<http://www.tablebuilder.singstat.gov.sg/publicfacing/createDataTable.action?refId=315>>.

⁶⁰³ Note that, unlike Chinese Singaporeans of past generations, especially those born before Singapore's Independence, who rendered help to their Chinese counterparts with the notion of helping their fellow countrymen in China, Singaporeans today no longer see themselves as Chinese but as Singaporeans. The help they are rendering to the Chinese illegal migrants, therefore, is more motivated by perceived economic benefits than the notion that they are the descendants of the same ancestors as the Chinese. See Siew Hoon Tan (n104).

⁶⁰⁴ Siew Hoon Tan (n104).

⁶⁰⁵ More details are discussed in Chapter Five.

B *Illegal Immigration in Singapore*

Historically, migrants to Singapore came from India and China.⁶⁰⁶ However, after the Second World War, a new situation emerged as one after another Southeast Asian countries gained their independence and differences in the pace of development of the different countries started to increase.⁶⁰⁷ On the one hand, due to a shortage of labour, Singapore began to allow more foreigners to work in Singapore.⁶⁰⁸ After 1965, work permits were issued to Malaysians to allow them to work in Singapore and the number of foreign workers in Singapore grew rapidly.⁶⁰⁹ By 1998, more than 18 per cent of the total population of Singapore were foreigners.⁶¹⁰ The census conducted in 2018 showed that about 29.2 per cent were non-residents whose population comprised foreigners who were working, studying, or living in Singapore.⁶¹¹ On the other hand, in the process of gaining independence, many Southeast Asian countries encountered political upheavals and instability, and this situation persisted in the early decades of independence.⁶¹² This led to more people from the affected countries seeking a better life in relatively more stable countries, and Singapore, with its economy getting stronger over the decades, appeared to them as one of the best choices in the region. This was especially true after the economic crisis in Southeast Asia in the 1990s.⁶¹³ However, unskilled workers who hold work permits are those without proper documents for entry into Singapore, or those without proper work permits to allow them to work in Singapore. There are also people who had initially intended to use Singapore as a transit point to go to other countries but, due to a twist of fate, became stranded on the island during transit, being neither able to get to the country of their choosing nor return to their home country.⁶¹⁴ Today, illegal immigrants in

⁶⁰⁶ Siew Hoon Tan (n104).

⁶⁰⁷ Ibid.

⁶⁰⁸ Saw Swee-Hock, 'Immigrants in Singapore' (2009) 1 *Southeast Asian Studies* 17–33.

⁶⁰⁹ Diana Wong, 'Transience and Settlement: Singapore's Foreign Labour Policy' (1997) 6(2) *Asian and Pacific Migration Journal* 135–67.

⁶¹⁰ Weng-Tat Hui, 'The Regional Economic Crisis and Singapore: Implications for Labour Migration' (1998) 7(2-3) *Asian and Pacific Migration Journal* 187–218.

⁶¹¹ Singapore Department of Statistics, *Yearbook of Statistics of Singapore 2019* (Singapore Department of Statistics, 2019).

⁶¹² Siew Hoon Tan (n104).

⁶¹³ Ibid.

⁶¹⁴ Ibid.

Singapore come from all over Southeast Asia and South Asia, such as Thailand, Vietnam, Myanmar, and Bangladesh.⁶¹⁵ There are also a large number of illegal immigrants from China.

Male illegal immigrants who manage to get employment mostly work as manual labour at construction sites or shipyards, or as food-stall assistants at neighbourhood coffee shops.⁶¹⁶ For example, although crane operators in the construction industry in Singapore are paid high incomes, few locals are willing to do that work because of the unpleasant conditions: confined to the small space of cranes and exposed to sun and rain.⁶¹⁷

Illegal female immigrants try to work as food-stall assistants or waitresses or do minor duties at food stalls, coffee shops, and other retail shops in Singapore.⁶¹⁸ Finding legal jobs is unlikely, however, so they further break the law by impersonating another woman by using someone else's identification documents, such as identity cards, passports, or work permits. Many women thus end up doing work that violates the law of Singapore, such as distributing pirated video compact discs, operating illegal gambling dens, providing services as prostitutes, or even working as runners for snakeheads and drug traffickers.

Many historical studies document the hardships endured by Chinese and Indian immigrants in Singapore at the turn of the 20th century. Some of the Chinese immigrants were even sold to work in Singapore as 'piglets' by human smugglers and many led a life of hardship, never able to return homes. James Warren, for example, in *Rickshaw Coolie*, described the rickshaw coolie business as 'a trade with low wages, hazardous work conditions, poor unionization and uncommon death'.⁶¹⁹ Abuse by employers was common. Working hours were long and wages were low.

Although the risk of illegally entering Singapore is now reduced—unlike before when people chose to swim across the Straits from Malaysia, many of them dying during the process—the living conditions, including conditions experienced by legal foreign workers, have surprisingly changed little, despite proper laws and rulings imposed by the government against the abuse of foreign workers. In recent years, there have been reports and newspaper articles on poor living

⁶¹⁵ Paul J Smith, *Terrorism and Violence in Southeast Asia: Transnational Challenges to States and Regional Stability* (Routledge, 2015).

⁶¹⁶ Siew Hoon Tan (n104).

⁶¹⁷ 王江雨 [Wang Jiangyu], 《小国必也寡民乎? — 新加坡的移民政策困境》 ['Will a Small Country Have Few People? Singapore's Immigration Policy Dilemma'] (2013) 11 南风窗 *Southwind Journal* 95.

⁶¹⁸ Siew Hoon Tan (n104).

⁶¹⁹ James Francis Warren, *Rickshaw Coolie: A People's History of Singapore 1880–1940* (Oxford University Press, 1986).

conditions for unskilled construction workers. Cockroaches and bedbugs infest crowded sleeping spaces, there are no proper eating places, and more than 20 workers have to share a single room.⁶²⁰

Furthermore, the abuse of and discrimination against foreign workers still exist today. For example, the legally employed maids who live in their employers' homes may not be necessarily leading a better life than the construction workers who live in cramped places. For the past few years, there have been maid-abuse cases reported every year. Forms of abuse include burning the maid's arm with an iron and hitting the maid with objects such as chopping boards and bottles.⁶²¹ Physical abuses are usually easy to detect, but not mental ones, such as confining maids to a place for extended periods or scolding and cursing them.⁶²² Such cases of mental harassment usually remain undiscovered until too late. There may still be many employers who treat their maids as if they are slaves sold to the family. As even legal maids easily fall victim to abuse, it is likely illegal immigrants suffer even more.

Discrimination is more common. An Indian Singaporean, for example, complained that he was being discriminated against because he looked like a Bangladeshi. He stated that the police would stop him to see his work permit and passport, and when he sought medical treatment, the medical staff were initially rude to him, their attitude changing after they saw his identity card. He was discriminated against even when shopping and queuing up for food. He thus concluded that the foreign workers must feel hurt like he did and urged Singaporeans not to discriminate against foreigners.⁶²³

Of course, not all foreign workers' living situations in Singapore are that bad. Some may lead a reasonably good life without any abuse. After these people return to their home country, their successful experiences are likely to motivate new migrants, including illegal migrants.

⁶²⁰ 'Singapore's Cramped Migrant Worker Dorms Hide Covid-19 Surge Risk' *The Guardian* (Web Page, 17 April 2020) <<https://www.theguardian.com/world/2020/apr/17/singapores-cramped-migrant-worker-dorms-hide-covid-19-surge-risk>>.

⁶²¹ 'Singapore: Domestic Workers Suffer Grave Abuses' (Web Page, 7 December 2005) <<https://www.hrw.org/report/2005/12/06/maid-order/ending-abuses-against-migrant-domestic-workers-singapore>>.

⁶²² 'New Sentencing Framework for Maid Abuse Cases Highlights Impact of Psychological Harm' (Web Page, 2 March 2018) <<https://www.channelnewsasia.com/news/singapore/new-sentencing-framework-for-maid-abuse-cases-highlights-impact-10007342>>.

⁶²³ Abdul Shariff Aboo Kassim, 'Stop Discriminating against Foreign Workers' (24 May 2005).

C *The Development of Immigration Policy in Singapore*

As Felix Soh states in his work, *Phoenix: The Story of the Home Team*, ‘No country today can tolerate a laissez-faire immigration policy’.⁶²⁴ Indeed, when borders were defined, border control became necessary. As countries become independent entities, and as they begin to set their own laws for the country, they also inevitably control the type of people entering their borders. Immigration laws were thus formed as Singapore developed into a nation with its own people, who themselves were early migrants. Afterwards, they and their descendants would increasingly see themselves as Singaporeans. At the same time, there was gross unemployment in the newly independent country as the market was then not big enough to create jobs for all its citizens, so there was a need to control the number of migrants.

The situation, however, had begun to change by the 1970s. Singaporeans in the 1970s wanted to speed up economic growth, so they sought a solution in importing foreign workers. At first, workers were sought from Malaysia, but Singapore did not want Malaysians to become Singapore citizens, so workers from Malaysia were not allowed to marry and settle down in Singapore in the early years of Independence. However, as many Malaysians and Singaporeans who were from the same families were separated for political reasons, many tried to enter Singapore to visit their families and they became illegal immigrants under the immigration laws. This shows that separating families as a way of reducing illegal immigrants is not feasible.

In colonial times, to control the number of migrants to Singapore and to curb rising crime, the *Aliens Ordinance* was formulated. When Singapore became independent, the *Aliens Ordinance* was developed into the *Immigration Act of the Republic of Singapore*. In the first five decades of Independence, these laws become more complex and more detailed, always catering to the rising needs of the government’s plans for the State. To be specific, Singapore implements different measures according to three types of foreigners: permanent residents, long-term and medium-term foreign workers, and short-term foreign workers. The management of the first two types is relatively loose, whereas that for the short-term foreign workers is very delicate. The employment scope of short-term labourers is severely restricted, such as the hotel service industry limited to Malaysian labourers, and the tutoring service industry limited to labourers from the Philippines, Thailand, and Indonesia.⁶²⁵ Moreover, they are not allowed to bring

⁶²⁴ Felix Soh, *Phoenix: The Story of the Home Team* (Times Editions, 2003).

⁶²⁵ 高奇琦 [Gao Qiqi], 《东亚新移民潮及其地区治理》 [East Asian New Migration and Regional Governance] (山西大学 [Shanxi University], 2005).

family members, marry locals, or apply for permanent residence. To ensure foreign workers return home after their employment expires, the government requires them to pay a security deposit of S\$5,000.⁶²⁶ More importantly, the Singapore government uses tax regimes to regulate the labour market and to control the number and the technical level of foreign labourers, as well as the labour composition of the industries in urgent need.⁶²⁷ The Singapore government not only stipulates a limit on the share of foreign labourers in the total labour force and the proportion of foreign labourers in various industries but also regulates immigration policies by taxing foreign labourers to facilitate the development of the national economy.

Just as the British government had welcomed immigrants to Singapore, the present independent government, too, extends a warm welcome to those deemed beneficial to Singapore's development. Those 'desirable' people become legal immigrants and the not-so-desirable ones, who enter the country through secret means or overstay in Singapore, become the illegal immigrants.

An equally important job for the government, besides encouraging suitable immigrants to Singapore, is that of keeping the 'undesirable' ones away from Singapore if possible, or if not, at least to keep their numbers under the government's control. The government knows very well that it cannot stop illegal immigrants from trying to enter the country, for no matter how well the borders are guarded, those with a will to enter or exit will keep trying to find loopholes and some, if not all, may succeed in doing so. Hence, to discourage them from trying, the government imposes harsh punishments on those smuggled in or overstay, and on those who facilitate their trips: the migrant smugglers.⁶²⁸ However, this is not enough to stop them. To make sure that illegal immigrants have fewer chances of leading a life comfortable enough to make them want to stay in Singapore, the government implements laws to punish those who attempt to help these illegal immigrants survive in Singapore—that is, the employers and the harbourers of the illegal immigrants.⁶²⁹ The Immigration and Checkpoints Authority of

⁶²⁶ Ibid.

⁶²⁷ World Bank, *Europe and Central Asia Economic Update, Fall 2019: Migration and Brain Drain* (World Bank, 2019).

⁶²⁸ Singapore is one of the countries with the strictest laws against illegal immigration. The benchmark sentence for illegal entry is usually one-month imprisonment and four strokes of the cane. See Siew Hoon Tan (n104).

⁶²⁹ For harbourers and employers of illegal immigrants, the minimum sentence is six months' imprisonment. (There has been a change in the mandatory imprisonment clause in the Immigration Law for harbourers who may be able to escape mandatory imprisonment under certain circumstances.) There is, moreover, a presumption clause (meaning that the burden of proof lies with the accused person who is considered guilty until he can prove his innocence) for all immigration offences.

Singapore has also been giving out booklets to educate the public on immigration offences as a direct way of engaging the public and raising awareness of the criminal nature of harbouring and employing illegal immigrants.⁶³⁰ In so doing, the government aims to make life difficult for illegal immigrants in Singapore, so that eventually those who manage to enter Singapore will find it hard to survive and will leave or, better still, surrender themselves. When these illegal immigrants go back to their own countries, they will then spread the news that life in Singapore is hard and discourage those who are about to embark on the treacherous trip.

D Summary

No government can control the political and economic circumstances of migrant-sending countries, nor the eagerness and desire of the people who will spare no effort and grab every opportunity to migrate in hope of a better future. Nor can the government alter its natural surroundings that have existed for centuries. In the case of Singapore, the government is thus often caught on the horns of a dilemma: keeping Singapore popular and attractive to outsiders while at the same time trying to keep out illegal immigrants. Although Singapore is one of the countries with the strictest laws against illegal immigration, which carry mandatory imprisonment not only for the illegal immigrants themselves but also their abettors, harbourers, and employers, this does not deter some people from entering the country in search of a decent job and a better life. Therefore, the government tries to create difficult conditions for illegal immigrants.

However, it should be noted that illegal immigrants are often victims themselves, so their living situation should also be considered. As one of the most important stakeholders, the interests of illegal economic immigrants should be considered. Legislators should not ignore the interests of illegal economic immigrants when making legislation. The government cannot simply use harsh laws to punish illegal immigrants or rely solely on creating a difficult living environment for illegal immigrants. It must also establish more effective legal migration channels and reduce economic gaps through international cooperation to solve the problem from the root.

In addition, despite the similarities between China and Singapore, the significant difference also needs to be noted. That is, Singapore is a smaller country with the total area of 728.3 km² while China is a larger country with 9.597 million km². Moreover, it is more difficult to popularise the utilisation of technology, such as monitors, in China due to the much larger size.

⁶³⁰ Siew Hoon Tan (n104).

To be specific, the Singapore government has placed much emphasis on the borders and is increasingly stepping up security on it by mapping, patrolling and erecting barriers.⁶³¹ This makes it extremely hard for people to enter Singapore illegally, so illegal migrants may have to continuously find new methods of illegal entry.⁶³² However, it is difficult for China to do the same because of its size and the utilisation of technology. For example, the China–Myanmar borderline is 2,186 kilometres, and the China–Vietnam borderline is 1,347 kilometres.⁶³³ As these regions are densely populated and many ethnic groups are spread across the borders, the border people of the two countries have close relationships.⁶³⁴ Intermarriage, trade, and communication are frequent. The area is densely covered by mountains and rivers, and the terrain is extremely rough, which makes monitoring and management difficult.⁶³⁵ According to the Port Office of the Yunnan Provincial Department of Commerce, as of 2011, there were as many as 90 commercial paths for border people and 103 border markets in the Yunnan Province alone.⁶³⁶ Therefore, China’s borders are much more difficult to patrol compared to Singapore.

V THE REGULATION OF ILLEGAL ECONOMIC IMMIGRATION IN RUSSIA

A Why Is Russia a Good Model for China?

First, Russia, like China, is facing two problems that go hand-in-hand: a rapidly ageing population and a serious labour shortage.⁶³⁷ Since the 1990s, Russia’s population has continued to decrease.⁶³⁸ The United Nations projected that the Russian population could fall to 121 million by 2050, but some pessimists imagine an even worse decline, to 80 million or so.⁶³⁹

⁶³¹ Eric Tagliacozzo, *Secret Trades, Porous Borders: Smuggling and States Along a Southeast Asian Frontier, 1865-1915* (Yale University Press, 2005).

⁶³² Siew Hoon Tan (n104).

⁶³³ 林孙俊 [Sunjun Lin] (n12) 48.

⁶³⁴ 宋全成 [Song Quancheng], 《非法外国移民在中国的现状、症结与对策》 [Illegal Immigrants in China: The Present Situation, Crux and Countermeasures] (2015) 1 山东大学学报（哲学社会科学版） *Journal of Shandong University (Philosophy and Social Sciences)* 55–63.

⁶³⁵ 罗刚 [Luo Gang] (n29) 100.

⁶³⁶ 林孙俊 [Lin Sunjun] (n12) 48.

⁶³⁷ Dmitry Medvedev, ‘A New Reality: Russia and Global Challenges’ (2015) 1(2) *Russian Journal of Economics* 109–29.

⁶³⁸ Tim Heleniak, ‘Russia’s Demographic Decline Continues’ (7 June 2002).

⁶³⁹ Philip Jenkins, *The Next Christendom: The Coming of Global Christianity* (Oxford University Press, 2007).

Moreover, in the 1980s, the proportion of the elderly in Russia's total population was close to 19 per cent.⁶⁴⁰ In 2006, the elderly population accounted for 17.3 per cent.⁶⁴¹ To solve the problems, Russia must attract immigrants. Similarly, China is about to face the issue of an ageing population, and it has been projected that China will suffer a large decrease in its total labour force and may become an immigration country.⁶⁴²

Second, Russia is facing the challenge of illegal economic immigration.⁶⁴³ According to the World Migration Report 2020, there are currently more than 12 million immigrants in Russia, and Russia is also the second-largest destination of migrants in Europe after Germany.⁶⁴⁴ Illegal immigration is a feature in Russia, although exact numbers are difficult to ascertain.⁶⁴⁵ According to the Federal Migration Service (FMS of Russia), there are currently from five to 15 million illegal immigrants in the Russian Federation and between three and five million foreigners are working in Russia illegally. These pose a threat to national labour markets and are contributing to the development of a shadow economy.⁶⁴⁶ In 2012, the total number of reports on administrative violations of the rules of stay and employment of foreign nationals in Russia amounted to almost 533,500. And in 2012, there were 109,155 reports on the violation of the established regulation of labour activity concerning foreign nationals and almost 89,000 reports concerning employers.⁶⁴⁷ A predominance of an illegal component in the structure of labour migration in many respects is caused by the peculiarities of formation and transformation of the economic model in which the informal sector is a contributing factor.⁶⁴⁸ It produces about a quarter of GDP and employs 20–30 per cent of the total workforce.⁶⁴⁹ Illegal migrants predominate in those sectors of the national economy where the shadow

⁶⁴⁰ 强晓云 [Qiang Xiaoyun], *移民对当代中俄关系的影响—非传统安全视角的分析* [The Impact of Immigration on Contemporary Sino-Russian Relations—Analysis from a Non-traditional Security Perspective] (Current Affairs Press, 2010).

⁶⁴¹ Ibid.

⁶⁴² ILO, *Perspectives on Labour Economics for Development* (ILO, 2013).

⁶⁴³ Irina Ivakhniouk, 'Illegal Migration: Russia' (2004) 13(1–2) *European Security* 35–53.

⁶⁴⁴ IOM, *World Migration Report 2020* (IOM, 2019).

⁶⁴⁵ Ibid.

⁶⁴⁶ Sergei Metelev, 'Migration as a Threat to National Security' (2016) 9(14) *Indian Journal of Science and Technology* 1–6.

⁶⁴⁷ Ibid.

⁶⁴⁸ Ibid.

⁶⁴⁹ Tatyana Nikolayevna Vitsenets, 'Assessment of the Sources of Additional Labour Force' (2014) 19(9) *Middle East Journal of Scientific Research* 1179–81.

segment share is considerable.⁶⁵⁰ Illegal economic immigration has also had an impact on national and regional labour markets by providing a national security indicator in the social and labour sphere. This is discussed later in the chapter.

Third, after the dissolution of the Soviet Union, Russia gained many small neighbouring countries. The economies in these countries are relatively underdeveloped, so people in these countries (such as Tajikistan, Uzbekistan, and Ukraine) may want to migrate to Russia, even though Russia is not very developed itself.⁶⁵¹ For example, illegal migration activities are rampant on the border between Russia and Ukraine. From 1999 to 2000, 11,000 illegal immigrants were found.⁶⁵² This situation is similar to China because China also has many neighbouring countries and the economy in China is better than its neighbouring countries, leading to a lot of people from neighbouring countries entering China both legally and illegally.

Fourth, like China, Russia is a socialist state with a civil law system. Historically, Soviet law has deeply influenced Chinese laws.⁶⁵³ Indeed, China's legal system theory was derived from that of the Soviet Union. Similarly, Russia also upholds the legal theory of the Soviet Union.⁶⁵⁴ Even today, there are still many Chinese scholars studying Russian law, including illegal economic immigration in Russia.⁶⁵⁵

⁶⁵⁰ Ibid.

⁶⁵¹ Sergey Ryazantsev, 'Labour Migration from Central Asia to Russia in the Context of the Economic Crisis' (31 August 2016).

⁶⁵² 但伟 [Dan Wei] (n108).

⁶⁵³ 王志华 [Wang Zhihua] (n109).

⁶⁵⁴ Ibid.

⁶⁵⁵ 恒之 [Heng Zhi], 《俄罗斯筑牢反偷渡防线》 [Russia Secures Anti-Smuggling Defence] (2020) 2 现代世界警察 *Modern World Police* 25–29; 高琳 [Gao Lin], 《国家安全视域下俄罗斯移民政策探析》 [Probe into Russia's Immigration Policies from National Security Perspective] (2019) 35(1) 武警学院学报 *Journal of the Armed Police Academy* 17–32; 张少宇 [Zhang Shaoyu] and 蒋莉 [Jiang Li], 《俄罗斯人口安全问题论析》 [Analysis of Russian Population Security] (2018) 7 国际研究参考 *International Research Reference* 26–40; 于晓丽 [Yu Xiaoli], 《近几年俄罗斯移民政策的新变化》 [Changes in Russian Immigration Policy in Recent Years] (2017) 6 世界民族 *World Ethno-National Studies* 88–94; 张峰 [Zhang Feng], 《当代俄罗斯国家移民政策的演变》 [Evolution of the National Migration Policy in Contemporary Russia] (北京外国语大学 [Beijing Foreign Studies University], 2016); 蒋莉 [Jiang Li], 《俄罗斯的外来移民问题》 [The Problem of Immigrants in Russia] (2015) 10 国际研究参考 *International Research Reference* 27–36; 曹伊 [Cao Yi], 《俄罗斯与中亚的非传统安全合作研究》 [Research on Non-traditional Security Cooperation between Russia and Central Asia] (PhD Thesis, 北京外国语大学 [Beijing Foreign Studies University], 2014); 程春华 [Cheng Chunhua], 《俄罗斯为何整顿非法移民》 [Why did Russia Regulate Illegal Immigrants] (2013) 21 世界知识 *World Knowledge* 42–43; 索妍 [Suo Yan], 《外国劳动移民对俄罗斯经济发展的影响分析》 [The Analysis of the Effect of Foreign Labour Migrants on Sustained Economic Growth of Russia] (哈尔滨工业大学 [Harbin Institute of Technology], 2013); 高际香 [Gao Jixiang], 《俄罗斯外来移民与移民政策选择》 [Immigrants in Russia and the Choice of Immigration Policy] (2012) 5 俄罗斯中亚东欧市场 *Russian Central Asian & East*

B *Illegal Economic Immigration in Russia*

Upon independence in the early 1990s, after the disintegration of the Soviet Union, Russia faced economic collapse and social transformation, which brought unprecedented changes in the number and distribution of migration.⁶⁵⁶ Since then, the movement to and from Russia has happened mostly within the region. Nationals from former Soviet Republics represented more than 90 per cent of all arrivals and more than two-thirds of departures between 1991 and 2015. Russia received about 11.8 million immigrants and lost 5.3 million emigrants over this period.⁶⁵⁷

In the period since 1989, the migrant population in Russia has undergone fundamental changes. The populations from Ukraine, Belarus, and the Baltic States have shrunk, while inflows from Central Asia and Transcaucasia (Armenia, Azerbaijan, and Georgia) have grown—from 15 per cent of all immigrants in the 1990s to almost 40 per cent from 2011 to 2015.⁶⁵⁸ This shift reflects a gradual transition of temporary labour migrants into permanent immigrants, as well as mortality among elderly immigrants from Ukraine and Belarus. In 2010, the main countries of birth of international migrants were Ukraine (about 3 million people, or 26 per cent of all migrants), Kazakhstan (2.5 million, 22 per cent), Uzbekistan (1.1 million, 10 per cent), and Belarus and Azerbaijan (740,000, or 6.6 per cent each).⁶⁵⁹

European Market 16–22; 于小琴 [Yu Xiaoqin], 《危机背景下俄罗斯劳动移民的现状与发展》 [Discussion Actuality and Development of Foreign Immigrants on the Background of Crisis] (2011) 6 人口学刊 *Population Journal* 58–64; 强晓云 [Qiang Xiaoyun], 《移民对当代中俄关系的影响——非传统安全视角的分析》 [The Impact of Immigration on Contemporary Sino-Russian Relations—Analysis from a Non-traditional Security Perspective] (Current Affairs Press, 2010); 朱陆民 [Zhu Lumin] and 汤希 [Tang Xi], 《非法移民问题与中亚安全》 [Illegal Immigration and Security in Central Asia] [2009] (26) 2 河北工程大学学报 (社会科学版) *Journal of Hebei University of Engineering (Social Science Edition)* 64–66; 李琪 [Li Qi], 《中国和俄罗斯非法移民法律控制研究》 [Research on Illegal Immigrant for Law Control of China and Russia] (新疆大学 [Xinjiang University], 2009); 刁秀华 [Diao Xiuhua], 《俄罗斯转轨时期移民问题研究》 [Study on the Immigrant Problem of Russia in Transition Period] (2008) 4 人口学刊 *Population Journal* 35–40; 徐海燕 [Xu Haiyan], 《俄罗斯的非法移民问题》 [Illegal Immigration in Russia] (2007) 6 国际资料信息 *International Information* 22–25; 徐海燕 [Xu Haiyan], 《俄罗斯民族迁徙进程中的非法移民问题》 [Illegal Immigration in the Process of National Migration in Russia] (2007) 9 俄罗斯中亚东欧市场 *Russian Central Asian & East European Market* 18–21; 强晓云 [Qiang Xiaoyun] and 马春海 [Ma Chunhai], 《当代俄罗斯移民政策透析》 [Analysis of Contemporary Russian Immigration Policy] (2005) 2 *Russian Studies* 26–30.

⁶⁵⁶ Olga Lazareva, ‘Russian Migrants to Russia: Assimilation and Local Labour Market Effects’ (2012) 4(1) *IZA Journal of Migration* 1–28.

⁶⁵⁷ Olga Chudinovskikh and Mikhail Denisenko, ‘Russia: A Migration System with Soviet Roots’ (18 May 2017).

⁶⁵⁸ Ibid.

⁶⁵⁹ Ibid.

People who have moved to Russia since the 1990s can be divided into three immigration groups: forced immigrants, labour immigrants, and illegal immigrants.⁶⁶⁰ Geographically speaking, immigrants in Russia mainly came from the former Soviet republics.⁶⁶¹ In the Russian Far East and European Russia, there were also short-term and medium-term migrants from Asian countries such as Vietnam, North Korea, China, Bangladesh, and Sri Lanka.⁶⁶²

Most of the immigrants from the Baltic countries and other countries from the Commonwealth of Independent States (CIS) were forced to migrate. Between 1989 and 2002, Russia received 10.9 million migrants from the former Soviet Republics (the current CIS plus the Baltic States).⁶⁶³ A large part of these Russians had to move under some degree of pressure, with many of them even fleeing conflicts including those in South Ossetia, Abkhazia, and Tajikistan.⁶⁶⁴ In Russia, they were therefore called refugees or forced migrants. Among them, Russia's largest source of forced migrants is Kazakhstan, which accounts for 35.3 per cent. Ranking second is Uzbekistan, which accounts for 13.9 per cent, followed by Ukraine at 9.9 per cent. The South Caucasus countries account for 18.9 per cent, Central Asian countries as a group for 29.8 per cent, and the Baltic states for 4.7 per cent of the increase in Russia's migrant population.⁶⁶⁵ As of January 2016, only from Ukraine, about 1.3 million forced migrants with different statuses were in Russia.⁶⁶⁶

Upon independence, although the unemployment rate in Russia was not low, there were still some jobs that Russians were reluctant to do; at the same time, many foreign enterprises were also in need of professional foreign workers.⁶⁶⁷ The foreign labour force was mainly in Moscow and its surrounding areas: Khanty-Mansi Autonomous Okrug, Yamalo-Nenets Autonomous Okrug, Khabarovsk Krai, and Amur Oblast.⁶⁶⁸

⁶⁶⁰ 强晓云 [Qiang Xiaoyun] and 马春海 [Ma Chunhai], 《当代俄罗斯移民政策透析》 [‘Analysis of Contemporary Russian Immigration Policy’] (2005) 2 *Russian Studies* 26–30.

⁶⁶¹ Ibid.

⁶⁶² Ibid.

⁶⁶³ Valery Tishkov, Zhanna Zayinchkovskaya and Galina Vitkovskaya, ‘Migration in the Countries of the Former Soviet Union’ (Research Paper, Policy Analysis and Research Programme of the Global Commission on International Migration, September 2005).

⁶⁶⁴ IOM, *Migration in the Russian Federation: A Country Profile* (IOM, 2008).

⁶⁶⁵ Tishkov, Zayinchkovskaya and Vitkovskaya (n663).

⁶⁶⁶ Irina Molodikova and T.N. Yudina, ‘Migration Strategies of Ukrainian Migrants: EU or Russia’ (2016) *Contemporary Problems of Social Work* 62–71.

⁶⁶⁷ 强晓云 [Qiang Xiaoyun] (n640).

⁶⁶⁸ Ibid.

The resulting labour shortage led to a flood of illegal immigrants in Russia. By 2002, the total number of illegal immigrants in Russia was between one million and 1.5 million.⁶⁶⁹ These illegal immigrants were mainly composed of labour immigrants from CIS countries, the Baltic States, China, and Afghanistan.⁶⁷⁰ Among immigrants in Russia in 2005, legal immigrants were only 700,000, while illegal immigrants ranged from five to 15 million.⁶⁷¹ In 2006, of the one million labour immigrants in Moscow, only 15 to 17 per cent had legal status.⁶⁷²

Since 2013, the number of illegal immigrants has been increasing by about three to five million each year.⁶⁷³ According to Mayor Sergei Sobyenin, Moscow had 900,000 legal immigrants and at least 3.5 million illegal immigrants until 2013.⁶⁷⁴ Most illegal immigrants come from CIS countries and other developing countries.⁶⁷⁵

Most illegal immigrants engage in manual labour (61.2%), of which unskilled workers account for 32.2 per cent. Female illegal immigrants are mainly engaged in trade (48.9%), public services (13.9%), and hotels and food services (11.2%).⁶⁷⁶

To cope with this situation, Russia has sought cooperation from the sending countries and has resolved many problems.

C International Cooperation

1 Multilateral Cooperation

The imbalance between economic development, cultural relations, and language has driven labour mobility among CIS countries and has also caused a rise in illegal immigration. Cooperation between Russia and Central Asian countries focuses on preventing illegal

⁶⁶⁹ 强晓云 [Qiang Xiaoyun] and 马春海 [Ma Chunhai] (n660).

⁶⁷⁰ Ibid.

⁶⁷¹ 徐海燕 [Xu Haiyan], 《俄罗斯民族迁徙进程中的非法移民问题》 [‘Illegal Immigration in the Process of National Migration in Russia’] (2007) 9 俄罗斯中亚东欧市场 *Russian Central Asian & East European Market* 18–21.

⁶⁷² Ibid.

⁶⁷³ 恒之 [Heng Zhi], 《俄罗斯筑牢反偷渡防线》 [Russia Secures Anti-smuggling Defense] (2020) 2 现代世界警察 *Modern World Police* 25–29.

⁶⁷⁴ ‘Moscow Mayor Sobyenin Says Migrant Crime Down 15 Percent’ *The Moscow Times* (Web Page, 15 December 2014) <<https://www.themoscowtimes.com/2014/12/15/moscow-mayor-sobyenin-says-migrant-crime-down-15-percent-a42305>>.

⁶⁷⁵ 程春华 [Cheng Chunhua], 《俄罗斯为何整顿非法移民》 [‘Why Did Russia Regulate Illegal Immigrants?’] (2013) 21 世界知识 *World Knowledge* 42–43.

⁶⁷⁶ 恒之 [Heng Zhi] (n673).

migration through labour migration cooperation. In terms of multilateral cooperation, the main institutions coordinating transnational population movements between Russia and Central Asian countries are the CIS, the Eurasian Economic Community, and the Customs Union.

Within the CIS framework, the former Soviet Republics signed the Treaty on Economic Union in 1993, which seemed to be ‘reinventing the wheel’ with its goal of gradually creating a free-trade zone within the CIS. The Treaty provided for a visa-free regime within the Union, as well as for free movement of goods, services, capital, and labour.⁶⁷⁷ The development of legislation on freedom of movement within the CIS framework, however, had lost momentum by the end of the 1990s. The Bishkek Agreement lost its validity in 2001, with the Russian Federation withdrawing from the agreement due to increased illegal labour migration from other CIS countries. As for the creation of a common market in the CIS, previewed by the Treaty on Economic Union, the enthusiasm of its members quietened gradually, hindered also by the often-opposing ambitions of the CIS states.

In November 1992, the Consultative Council on Labour, Migration and Social Security of Citizens of CIS States was created, marking the first administrative organ for labour migration issues. The intentions of the CIS country leaders, which signed an agreement on the creation of the Consultative Council, reflected the outcome of migratory movements of the early 1990s. As most of these movements were the return of ethnic Russians to their homeland, favourable conditions for the newcomers’ further employment had to be secured. The Consultative Council, consisting of ministers for labour of the CIS members, had, therefore, the main goal of detailing a comprehensive agreement on labour migration in the CIS.

In 2002, as a CIS initiative, the CIS member states passed the *Regulation on Creation of Database on Illegal Migrants and Persons Prohibited from Entering the Territories of Parties According to their National Laws, and on the Exchange of Information on Illegal Migration*.⁶⁷⁸ It was thought the database should provide the necessary information about illegal migration within the CIS and should be commonly used by the CIS border guards.

⁶⁷⁷ *Dogovor o sozdanii ekonomicheskogo soyuza SNG, 24 sentyabrya 1993 goda* (Treaty on Creation of the CIS Economic Union), 24 September 1993.

⁶⁷⁸ Lilia Ormonbekova, ‘Equivocal Claims: Examining Labour Migration Regimes with Ambivalent Control Claims—Central Asian States’ Policies on Migration Control’ in Elspeth Guild and Sandra Mantu, *Constructing and Imagining Labour Migration: Perspectives of Control from Five Continents* (Routledge, 2016).

In October 2007, the heads of states of the CIS signed the *Declaration on the Approved Migration Policy of the State Parties of the Commonwealth of Independent States* in Dushanbe.⁶⁷⁹ The document highlights the importance of migration issues within the CIS. At the same time, the document also clarifies the position of the member states to formulate coordinated and unified migration policies—namely, to take practical actions to protect the rights and interests of migrants and oppose discrimination against migrants; and to call on member states to cooperate in coordinating migration laws and regulations to formulate and implement migration plans.

In November 2008, the heads of states of the CIS signed the *Convention on Legal Status of Migrant Workers and Members of Their Families of CIS Member States*.⁶⁸⁰ The Convention stipulates the basic rights of labour migrants, the employment procedures, and issues related to social security.

The signing of the *Concept of the CIS Member States' Common Migration Space* in May 2012 was important because it brought about a unified regional approach towards the migration processes in CIS countries and presented a coordinated position towards the formulation and implementation of a common interstate migration policy in the region.⁶⁸¹ The Concept emphasises the coordination of the formulation and implementation of migration policies among CIS member states, providing a good environment for human resource flows, protecting the rights and interests of migrants, expanding the legal employment channels for migrants, and improving the efficiency of intergovernmental cooperation on migration.

In 2014, the Summit of CIS Heads of State Council approved the Program for Countering Illegal Migration for 2015–2019.⁶⁸² The Program includes the formulation and implementation of a unified migration policy, coordination and improvement of migration-related legislation, improvement of border supervision, joint prevention of illegal migration, special investigation operations, promotion of technical information exchange, and training and cooperation of administrative and professional technical personnel.

⁶⁷⁹ 'Decision of Council of Heads of States of Commonwealth of Independent States' (Web Page, 5 October 2007) <<https://cis-legislation.com/document.fwx?rgn=19193>>.

⁶⁸⁰ OECD, *How Immigrants Contribute to Kyrgyzstan's Economy* (OECD Publishing, 2017).

⁶⁸¹ IOM, 'Labour Migration as a Factor of Development in the Space of the Commonwealth of Independent States' (Research Paper, Preparatory Meeting of the Heads of the Migration Agencies of the CIS Member States for the 2013 High-level Dialogue of the UN General Assembly on International Migration and Development, July 2012).

⁶⁸² Armands Pupols and Bahargul Rahmanova, *Regional Cooperation as a Factor for Peace and Stability in Central Asia* (United Nations Regional Centre for Preventive Diplomacy for Central Asia, 2014).

The Eurasian Economic Community, consisting of Russia, Belarus, Kazakhstan, Kyrgyzstan, and Tajikistan, was created in October 2000. The organisation's goals include the establishment of a customs union, a common market, a unified transportation system, a standardised currency exchange, and equal opportunities for production and entrepreneurs. In addition to the economic constant of the organisation, it also proposes equal rights in social and educational policies. According to the Interparliamentary Assembly, an organ responsible for the formation of the legislative policy of the Eurasian Economic Community and harmonisation of its members' legislation, the most important need for migration is an intergovernmental treaty that coordinates the migration policy of the members. Since there was no intergovernmental legislation on migration within the Eurasian Economic Community, the Interparliamentary Assembly urged the members in 2003 to formulate unified employment conditions, ensure mutual recognition of diplomas, establish unified entry documents for members of the Eurasian Economic Community, establish a system conducive to migrant workers from the community, legalise migrant workers from one Eurasian Economic Community country already residing in the territory of the other, prevent forced and illegal migration, establish a research centre on economic development prospects and its impact on potential labour migrants, and establish a Eurasian bank on labour migration data.⁶⁸³

The Customs Union was created in December 2010 at the Eurasian Economic Community summit in Moscow and one of the consequences was a reduction in the number of administrative barriers for labour migration between Russia, Belarus, and Kazakhstan.⁶⁸⁴ In November 2010, an *Agreement on the Legal Status of Migrant Workers and Members of their Families* was signed to establish a free trade zone within the CIS.⁶⁸⁵ According to the Agreement, activities performed by migrant workers are to be organised by the employers in the state of employment without restrictions, for the protection of the national labour market; furthermore, migrant workers are not required to obtain permits to work in the territories of the states that are party to the Agreement.⁶⁸⁶

The above member states include both sending countries and receiving countries, and their interests on the issue of illegal migration are different. Therefore, the focus of multilateral

⁶⁸³ Ormonbekova (n678).

⁶⁸⁴ Vladimir Lebedev and Elena Radevich, *Labour Law in Russia: Recent Developments and New Challenges* (Cambridge Scholars Publishing, 2014).

⁶⁸⁵ Ibid.

⁶⁸⁶ Ibid.

cooperation is not on combatting illegal migration flows among member countries but on strengthening cooperation on legal labour migration and protecting the rights of labour migrants. The illegal migration countering plan developed and implemented by the CIS only targets illegal migrants from third-party countries outside the organisation.

2 Bilateral Cooperation

The cooperation between Russia and Central Asian countries to prevent and control illegal migration mainly involves adjusting and standardising migration procedures and reducing illegal migrants by establishing a pragmatic and effective labour migration system. Specifically, there is:

a) *bilateral cooperation between Russia and Tajikistan*. Tajikistan is eager to cooperate with Russia regarding migration issues because it will not otherwise be able to solve its social problems and meet the growing demand for employment. Therefore, Tajikistan attaches great importance to cooperation with Russia and hopes that, through cooperation, more migrants from Tajikistan can migrate to Russia legally, which would alleviate the pressure on social and economic development. On the other hand, Russia needs to cope with the immigration problems that occurred after the dissolution of the Soviet Union. Thus, Russia and Tajikistan signed an agreement on labour activities and the protection of Tajik nationals' rights in the Russian Federation in 2004.⁶⁸⁷ Tajikistan approved the treaty in January 2005, but Russia withheld ratification until July 2006 and only started implementation in January 2007. The Tajik–Russian Group for Migration was established, and the heads of the two countries' migration services meet twice a year to discuss and resolve bilateral problems associated with migration. This agreement largely facilitated the relations of the two states in regulating the workforce migration from Tajikistan to Russia. Migrant workers are guaranteed protection. For instance, this agreement:

- guarantees social protection and medical assistance;
- attempts to avoid double taxation;
- regulates the import and export of equipment and the financial means required for labour activities;

⁶⁸⁷ International Federation for Human Rights, *From Tajikistan to Russia: Vulnerability and Abuse of Migrant Workers and Their Families* (International Federation for Human Rights, 2012).

- acknowledges education documents.⁶⁸⁸

However, this agreement covers only migrants in a legal situation, leaving those in illegal situations with no grounds for protection. In February 2013, Moscow agreed to grant work permits to Tajik labour migrants for three years instead of one and to allow them a longer period to register their presence with the authorities, which the Migration Service of Tajikistan presented as a major step forward.⁶⁸⁹

Additionally, some steps have been taken through the opening of diplomatic and migration-linked bodies. For instance, a bilateral group was set up in 2004 to protect the rights and interests of Tajik citizens in Russia.⁶⁹⁰ The protection of the rights of migrant workers in Russia was also provided through Tajik consular services.⁶⁹¹ In December 2012, the Migration Service opened an office in Russia, within the Tajik Embassy.⁶⁹² Fifteen people work in Moscow and travel to the regions. Their tasks are to study the labour market, to work with the Russian FMS and employers, and to protect migrants.

As well as building a legal basis for migration cooperation and setting up related institutions, Russia and Tajikistan cooperate in education and training, establishing inter-regional cooperation on labour migration and the transnational labour market. Russia and Tajikistan also cooperate in the field of education and culture to improve the professional skills and language skill of migrants. For example, Russia keeps dispatching schoolteachers to Tajikistan as part of its ongoing efforts to assist the country's struggling education system.⁶⁹³ In 2007, several agreements were also signed at the regional level between the government of Tajikistan and the government of Moscow, between Khaltan Province and the Orenburg and Volgograd regions, between Sughd Province and the city of Ivanovo and Altai and Krasnodar Territories. A representative of the city of Qurghonteppa explained that Khaltan Province also has a migration agreement with Altai Territory and Voronezh and that more than 20 contracts have been signed between firms through the chamber of

⁶⁸⁸ Anna Di Bartolomeo, Shushanik Makaryan and Agnieszka Weinar, *Regional Migration Report: Russia and Central Asia* (European University Institute, 2014).

⁶⁸⁹ International Federation for Human Rights (n687).

⁶⁹⁰ United Nations, 'Committee on the Rights of Migrant Workers Examines the report of Tajikistan' (Web Page, 4 April 2019) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24451&LangID=E>>.

⁶⁹¹ Ibid.

⁶⁹² International Federation for Human Rights (n687).

⁶⁹³ 'Russia Sends More Teachers to Tajikistan' (Web Page, 1 September 2018) <<https://eurasianet.org/russia-sends-more-teachers-to-tajikistan>>.

commerce. Altai Territory needs doctors (paediatric and primary care), nurses, and tractor drivers and sends vacancy announcements to Khatlon Province.⁶⁹⁴

- b) *bilateral cooperation between Russia and Kyrgyzstan*. Russia and Kyrgyzstan have signed more than 120 bilateral agreements in migrant matters and taken into consideration the contributions of the civil sector.⁶⁹⁵ The main issue, task, and coordinating mechanism of cooperation between the two have been clarified. Related agreements on labour migration mainly focus on joint development of career and technical education, improvement of the Russian-language proficiency of labour migrants, and development of inter-regional cooperation. In the early days of the dissolution of the Soviet Union, Russia and Kyrgyzstan signed an agreement on a simplified procedure for the acquisition of nationality⁶⁹⁶ and an agreement on the regulation of the migration process and protection of migrants' rights,⁶⁹⁷ to cope with the migration issue. The two countries also signed an agreement on employment and social protection of migrant workers in 1996 and a protocol on amendments to the agreement on employment and social protection of migrant workers in 2003.⁶⁹⁸ After that, the two governments set up a joint working group and held regular meetings to discuss the challenges of implementation. In February 2011, the joint working group held its fifth meeting in Bishkek.⁶⁹⁹ The primary issues discussed at the meeting were about establishing organisational mechanisms to coordinate an employment policy for labour migrants, developing career and technical education, and promoting standardised and orderly labour exchanges. According to the meeting, Kyrgyzstan has had pilot vocational schools in seven states to jointly train labour migrants with Russia.⁷⁰⁰ Moreover,

⁶⁹⁴ International Federation for Human Rights, 'Tajikistan: Exporting the Workforce – At What Price?' (Web Page, 24 October 2011) <<https://www.fidh.org/en/region/europe-central-asia/tajikistan/Tajikistan-Exporting-the-workforce-10841>>.

⁶⁹⁵ UN, 'Committee on the Rights of Migrant Workers Considers Initial Report of Kyrgyzstan' (Web Page, 2014) <<https://ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15838&LangID=E>>.

⁶⁹⁶ *Agreement between the Russian Federation and the Republic of Kyrgyzstan on the Simplified Procedure for Acquisition of Nationality by the Citizens of the Russian Federation Arriving for Permanent Residence to the Kyrgyz Republic, the Citizens of the Kyrgyz Republic Arriving for Permanent Residence to the Russian Federation and Getting out of Former Nationality* (28 March 1996).

⁶⁹⁷ *Agreement of 18 July 1995 between the Government of the Russian Federation and the Government of the Republic of Kyrgyzstan on the Regulation of Migration Process and Protection of Migrants' Rights* (18 July 1995).

⁶⁹⁸ IOM, *Extended Migration Profile of the Kyrgyz Republic* (IOM, 2012).

⁶⁹⁹ 曹伊 [Cao Yi], 《俄罗斯与中亚的非传统安全合作研究》 ['Research on Non-traditional Security Cooperation between Russia and Central Asia'] (PhD Thesis, 北京外国语大学 [Beijing Foreign Studies University], 2014).

⁷⁰⁰ Ibid.

since 2011 the two countries have launched a pilot project to train migrants in the Russian language.⁷⁰¹

- c) *bilateral cooperation between Russia and Uzbekistan*. Of the estimated 2.5–3 million Uzbek migrants in 2010, many remained illegal in Russia, fearing they would be unable to go back there once they had left.⁷⁰² To standardise migration procedures and reduce illegal migrants, the two countries cooperate on migration issues. For example, in 2007, Uzbekistan and Russia signed a bilateral agreement on labour migration. According to this agreement, which regulates labour migration, entry and exit of Uzbekistan citizens in Russia would be performed within laws and international contracts signed between Uzbekistan and Russia. This agreement seeks to stop illegal migration, reduce its negative consequences, as well as prevent human trafficking, and stipulates that Uzbekistan citizens in Russia can work legally only after signing a labour contract with an employer or upon signing a civil contract with a customer.⁷⁰³ In the same year, Uzbekistan and Russia signed three more agreements on the departing illegal migrants, prevention of illegal migration, and protection of labour migrants' rights. The rights of migrants include the right to rest and to access medical treatment. According to Russian legislation, employers should provide medical services to citizens of Uzbekistan. The agreements also stipulate working conditions and salaries of legal migrants in Russia.

Moreover, the legislation stipulates that the salary of migrants from Uzbekistan should not be lower than that of Russian citizens of the same level and occupation, and their working conditions should be equal. The agreement also mentions that salaries of Uzbekistan migrants can be transferred to Uzbekistan and tax on their income should be regulated by Russian laws and an international agreement on taxes.⁷⁰⁴ In July 2007, the two countries signed an agreement to establish branch offices of the Russian Federation Migration Service in Uzbekistan.⁷⁰⁵ This decision is conducive to improving the efficiency of migration cooperation and reducing the number of illegal migrants.

⁷⁰¹ 'Pilot Project to Train Migrant Russian Language Starts in Nizhny Novgorod' (Web Page, June 2011) <<http://news.mail.ru/inregions/volgaregion/52/society/10193372/>>.

⁷⁰² Armin Bauer and Myo Thant, *Poverty and Sustainable Development in Asia* (Asian Development Bank, 2010).

⁷⁰³ Zulaykho Kadirova, 'Cooperation on Migration between Uzbekistan and Russian Federation' (2017) 69 *World Scientific News* 143–53.

⁷⁰⁴ Ibid.

⁷⁰⁵ 曹伊 [Cao Yi] (n699).

Russia has also conducted bilateral cooperation with Kazakhstan and Turkmenistan. The cooperation mechanism on labour migration between Russia and Central Asian countries has been set up. Its practice has proved that the source and destination countries of illegal migrants can standardise labour migration procedures and reduce illegal migrants based on cooperation because illegal migrants affect not only the destination country but also the source country. Therefore, the source country and the destination country of illegal migrants can reach a consensus to some extent to solve this problem together.

3 The effects and problems of cooperation

According to Russia's immigration policy, Central Asian countries such as Tajikistan and Kyrgyzstan coordinate their migration laws and policies, set up relevant migration agencies, and carry out international cooperation to assist people to legal employment in Russia. With the joint efforts of Russia and Central Asian countries, effective employment channels have been established, and employment information exchange is prompter and more convenient. Moreover, the professional skills of the labour force from Central Asia have been improved to a certain extent and are moving towards standards that meet the needs of the Russian labour market. Although cooperation on labour migration cannot solve the problem of illegal migration in the short term, it is likely to help coordinate the orderly flow of migrants between Russia and Central Asian countries in the long term.

However, Russia and Central Asian countries also have some contradictions and differences concerning the migration issue. These are mainly shown in the types of supply and demand for labour migrants, attitudes towards illegal migrants, and the benefits of migration cooperation.

First, there is a contradiction between Russia and Central Asia regarding the types of supply and demand for labour migrants. The concept of a national migration policy for the Russian Federation until 2025 shows that Russia wants to attract highly skilled immigrants such as professionals, entrepreneurs, investors, and international students. However, most of the labour immigrants from Central Asia are low-skilled labourers with little or no knowledge of Russian language or culture.

Second, Central Asian countries and Russia have different attitudes towards illegal migration. Russia sets labour quotas based on the number of required labourers each year, and severely cracks down on illegal immigration, while Central Asian countries emphasise the importance of labour migration to Russia. And the reasons for illegal migration are various, including the reasons inside Russia: Russian public opinion has led to stricter immigration policies on Central

Asia, so labour quotas have been reduced, but the administrative labour quotas are inconsistent with the actual labour market demand and are far less than the scale of labour export of Central Asian countries. Moreover, there are problems in the implementation of Russian immigration policies with the corruption of law enforcement personnel leading to an influx of illegal immigrants from Central Asia flowing into Russia or staying in Russia illegally, and the rights of these immigrants are not guaranteed. Therefore, Central Asian countries hope that Russia expands labour quotas, implements a loose policy for Central Asian immigrants, and legalises illegal immigrants.

Third, Russia and Central Asia draw different benefits from migration cooperation. Russia's interests are mainly in geopolitics. Russia is good at using the migration issue to draw Central Asian countries over to its side to pave the way for the Eurasian Economic Union driven by Russia, or to use the issue of illegal migration to warn the countries when conflicts arise. For example, in 2011, after Tajikistan sentenced a Russian pilot to eight and a half years in prison, the Russian Migration Service expelled 297 illegal immigrants from Tajikistan as a response.⁷⁰⁶ On the other hand, some Central Asian countries have taken advantage of Russia's geopolitical needs to put forward requirements that would benefit their economic development.

D Summary

There is a gap between Russia and Central Asian countries in economic development. As a result, Central Asia has exported a labour force to Russia. While exporting legal migrants, the problem of illegal migrants has also arisen. Numerous illegal migrants from Central Asia moved into Russia for many reasons, including economic, population, and cultural factors and geopolitics. They have brought some benefits to Russia, such as alleviating the population crisis. However, at the same time, they have also harmed Russian social stability and economic and cultural development. To solve this problem, Russia constantly adjusts its immigration policy and frequently carries out international cooperation with Central Asian countries, including multilateral cooperation and bilateral cooperation.

During this process, Russia has had some success in terms of international cooperation. At the same time, it should be noted that Russia still has some shortcomings in dealing with illegal migration. For example, the concept of a national migration policy for the Russian Federation until 2025 shows that Russia wants to attract highly skilled immigrants. However, in practice,

⁷⁰⁶ Ibid.

Russians are reluctant to engage in low-skilled jobs such as construction and agriculture, which often require large numbers of foreign labour immigrants.⁷⁰⁷ Thus, Russian immigration policy requires improving the quality of immigrants, while ignoring Russia's demand for labour immigrants, which is inconsistent with the national condition. Therefore, China should selectively learn from Russia's experience in dealing with illegal migration. While learning from Russia's good experiences, China should also pay attention to avoid similar problems.

VI CONCLUSION

This chapter summarises how the international community deals with illegal economic immigration. Because it is an international issue, it is necessary to learn from the practice of the international community. The purpose of this study is to make feasible recommendations to the Chinese government that are based on the measures of the international community. The regulation of illegal economic immigration in the United States, the European Union, Japan and Australia can be used as reference. More importantly, Singapore and Russia are good models for China. Illegal economic immigrants are one of the important stakeholders, but legislators tend to overlook them. Singapore provides China with an important example in this regard. Moreover, the problem of illegal economic immigration involves sending countries, receiving countries, and transit countries, and so the receiving country cannot solve it on its own. International cooperation is essential. Russia has a lot of successful experience in this area, which it can share with China. The next chapter presents this study's recommendations to the Chinese government.

⁷⁰⁷ 高琳 [Gao Lin], 《国家安全视域下俄罗斯移民政策探析》 [‘Probe into Russia’s Immigration Policies from National Security Perspective’] (2019) 35(1) 武警学院学报 *Journal of the Armed Police Academy* 17–32.

CHAPTER FIVE: RECOMMENDATIONS

I INTRODUCTION

This chapter makes recommendations to the Chinese government. First, it discusses factors that help determine the extent of the reform. Then it makes recommendations in terms of policy. The factors considered are the economy, politics, individual interests, and national interests. After that, recommendations are made in terms of the law, including legislation, enforcement, and international cooperation.

II FACTORS THAT HELP DETERMINE THE EXTENT OF THE REFORM

Before providing recommendations for regulatory framework reform, it is important to analyse the factors that help determine the extent of the reform. They consist of six aspects.

The reform of the regulatory framework governing illegal economic immigration should be part of a systematic process that simultaneously addresses the issues currently facing contemporary Chinese society. Along with migration law reform, the issue of illegal immigration requires reform of laws regarding administrative law, administrative procedural law, labour introduction, border inspection, migration intermediary agencies, and realty rental, as well as the content of legal education.

The reform of the regulatory framework concerning illegal economic immigration needs to be gradual. Immigration has gradually increased after the reform and opening-up of the economy, and illegal immigration only appeared around 1990. For China, it is still a new issue. Although the laws have been improving over the years, regulations on illegal immigration are still scattered in various laws. The National Immigration Administration was established in 2018; however, the specific subordinate units have not been fully set up or improved. According to the interviews, legislators are extremely cautious about legal reforms. They need a long time to study the reforms so as not to risk becoming a laughingstock of the domestic and international communities.⁷⁰⁸ This will make it difficult for comprehensive reform of the regulatory framework concerning illegal economic immigration to occur quickly. Hasty reform measures may result in a deadlocked process and social disruption, which could do more harm than good. Hence, the reform needs to be carried out in stages.

⁷⁰⁸ This information was given by the migration law scholar U on 1 May 2019.

Any reform process will endure some transitional problems. Indeed, the more extensive the changes are, the greater the adjustment required. Initially, various specific migration offices need to be established nationwide, which requires the recruitment of personnel and inter-departmental scheduling. As the responsible departments undergo training to become familiar with new requirements, personnel costs may increase, and some personnel may find it difficult to understand and comply with the changed rules. To achieve the regulatory objective, reform strategies and measures need to ensure that these initial issues are managed.

Administrative discretion needs to be properly regulated. If the scope of administrative discretion is too wide, the application of reformed laws may lead to inconsistent decision-making. Yet the administrative authority cannot comprehensively implement legislation if their discretion is too narrow. The uncertainty brought about by wide administrative discretion may cause individuals to anticipate how the government might apply the new law; and because the discretionary powers of entry-and-exit administration in China are too broad, reforms need to narrow the scope for discretion.

The issue of human rights should be taken into consideration. Discrimination against foreigners may be worse in some areas than in others but it occurs everywhere in the world. In fact, discrimination is not only against foreigners but also people in different regions of the same country. Absolute equality and fairness are dream goals that are often difficult to achieve. If this unfairness is just a person's inner favourability—for example, in a two-person contest, the impression and favourability of one is more than another no matter what the reason—then it can be regarded as natural and understandable. However, if this unfairness rises to the level of causing obvious harm, whether it is physical or mental, it must be strictly prohibited and punished in the law. As in the situation in Singapore mentioned in Chapter Four, not only illegal immigrants but legal immigrants and even highly skilled talents may be discriminated against because of their different appearance. Hence, consideration of the reasons behind illegal migration activities and their living conditions is needed. What needs to be recognised is that illegal immigrants themselves can easily become victims.

Finally, both temporary and permanent solutions are sought here while focusing on permanent solutions. The recommendations provide a strategic direction for the resolution of the issues regarding the current regulatory framework, rather than detailed plans for each issue. Effective reform will arise from tackling the issues at their root, rather than by addressing the issues that flow as their consequence.

III POLICY RECOMMENDATIONS

China's current policy on immigration is to encourage highly skilled talents to work in China, to control general foreign workers, and to limit low-skilled foreign workers.⁷⁰⁹ As discussed before, this policy is incompatible with reality. To improve the policy, several factors need to be considered.

A The Economy

With China's huge population, economic growth differs from region to region. China is currently facing severe employment pressure and still has many concerns about the opening-up of the labour market, especially the low-skilled labour market. However, a real dilemma exists. On the one hand, strict requirements are imposed on foreign workers. On the other hand, labour shortages in some regions and industries have caused a large-scale influx of illegal immigrants, and the effects of existing regulatory policies and measures are extremely limited. To cope with regional economic disparities, local governments may be able to play a more important role by adopting flexible policies and introducing foreign labourers in a targeted manner. For example, some regions require a large volume of low-skilled labourers. If they strictly follow the current labour policies—such as ‘prohibiting individual economic organisations and individual citizens from hiring foreigners’,⁷¹⁰ or ‘employers should employ foreigners for positions that have special needs, and where there is a temporary shortage of suitable candidates in the domestic country, while not violating the relevant state regulations’⁷¹¹—it will not only cause difficulties to the local economy, but it will also fail to solve the problem of the large influx of illegal immigrants. To give full play to the initiative of local governments, authorities should consider migration quotas.

⁷⁰⁹ 《外国人来华工作许可制度试点工作启动》 [Pilot Work on the Work Permit System for Foreigners in China Launched] (09 September 2016) < http://www.gov.cn/xinwen/2016-09/09/content_5107035.htm >.

⁷¹⁰ 《人力资源社会保障部关于修改<外国人在中国就业管理规定>的决定》 [Decision of Ministry of Human Resources and Social Security on Amending the Regulation on the Employment of Foreigners in China] (PRC) Ministry of Human Resources and Social Security, 13 March 2017, art 33.

⁷¹¹ 《人力资源社会保障部关于修改<外国人在中国就业管理规定>的决定》 [Decision of Ministry of Human Resources and Social Security on Amending the Regulation on the Employment of Foreigners in China] (PRC) Ministry of Human Resources and Social Security, 13 March 2017, art 6.

B Politics

Policies should protect human rights. For illegal immigrants, it should be considered whether the repatriation policy should apply to all illegal immigrants or whether they should be treated differently. For example, some illegal economic immigrants have married Chinese citizens and had children. Under the current law, they should be repatriated.⁷¹² However, repatriation would violate their partners' and children's rights. According to the *Universal Declaration of Human Rights*,⁷¹³ the *International Covenant on Civil and Political Rights*,⁷¹⁴ the *International Covenant on Economic, Social and Cultural Rights*,⁷¹⁵ and the *Convention on the Rights of the Child*,⁷¹⁶ the family is the natural and basic social unit and should be protected by society and the State. Mothers and children are entitled to special care and assistance, and all children should enjoy the same social protection. Therefore, if illegal immigrants who have married Chinese citizens and had children are repatriated, the family will be broken, and children's rights will be violated. It was encouraging to hear in the interviews that there has been some development in recent years in this respect—that is, the public security organs now usually take two measures: (1) if the visa expires within one year, they need to go through the family reunion visa; (2) if it is more than one year, they will be repatriated first, then they can reapply for the family reunion visa. Generally, the application is likely to be approved.⁷¹⁷ However, whether repatriation measures should be applied in this situation still needs to be considered. Also, in some areas, when illegal economic immigrants are found, they are directly repatriated.⁷¹⁸ This will not only cause dissatisfaction among local people but may also cause misunderstanding in the sending country, thereby affecting international relations. Therefore, specific regulations need to be made for those who are not suitable for repatriation.

⁷¹² 《中华人民共和国出境入境管理法》 [Entry-and-Exit Administration Law of the People's Republic of China] (PRC) Standing Committee of National People's Congress, 1 July 2013, art 62.

⁷¹³ *Universal Declaration of Human Rights 1948*, UDHR, G.A. res.217 A(III), UN Doc.A/810, UDHR, art 16 and 25.

⁷¹⁴ *International Covenant on Civil and Political Rights 1966*, 16 December 1966, entered into force on 23 March 1976, 999 UNTS 171, ICCPR, art 23 and 24.

⁷¹⁵ *International Covenant on Economic, Social and Cultural Rights 1966*, entered into force on 3 January 1976, 993 UNTS 3, ICESCR, art 10.

⁷¹⁶ *Convention on the Rights of the Child 1989*, entered into force on 2 September 1990, 1577 UNTS 3, CRC, art 7, 9, 26 and 27.

⁷¹⁷ This information was given by the interviewee L from the public security bureau on 9 April 2019.

⁷¹⁸ 罗刚 [Luo Gang] (n29) 173.

C National Interests

National interests include the interests of Chinese industries and the interests of Chinese citizens. On the one hand, some industries in China require low-skilled immigrants to fill a labour shortage or bring down costs. At the same time, some citizens need low-skilled immigrants as labourers or potential spouses. On the other hand, the arrival of immigrants may deprive citizens of job opportunities, or cause conflict with citizens due to language or cultural barriers. Therefore, no matter what policy direction the Chinese government takes, there must be solutions to consequent problems. If the policy is to restrict or not introduce low-skilled immigrants, measures need to be formulated to resolve the problem of labour shortages. If the policy is to introduce low-skilled immigrants, then measures need to be formulated to resolve conflict issues, such as promoting integration.

D Individual Interests

Individual interests refer mainly to the interests of low-skilled immigrants. Everyone has the right to leave and return, and the right to pursue happiness. Low-skilled immigrants come to China because they can obtain more economic benefits and live better in China. Strict policies and laws will not stop them from coming to China and indeed may force them to choose illegal ways to immigrate to China. Therefore, to reduce illegal economic immigrants and avoid the negative effects of illegal economic immigration the policy needs to be appropriately relaxed and procedures simplified to enable low-skilled immigrants to come to China legally.

IV LAW RECOMMENDATIONS

A Legislation

1 The Necessity and Feasibility of Regulating Illegal Economic Immigration in China

a) Policy Foundation

The Chinese government has always opposed illegal immigration and adopted strict policies such as the repatriation policy. China's repatriation policy for illegal immigrants is reflected in administrative law and criminal law, supplemented by many legal documents. For example, the *2013 Entry-and-Exit Administration Law of the People's Republic of China*⁷¹⁹ and the 1997

⁷¹⁹ 《中华人民共和国出境入境管理法》 [Entry-and-Exit Administration Law of the People's Republic of China] (PRC) Standing Committee of National People's Congress, 1 July 2013.

Criminal Law of the People's Republic of China (revised in 2017, hereinafter referred to as the 2017 Criminal Law)⁷²⁰ are the foundation and core of China's administrative and criminal laws governing the repatriation of illegal immigrants. Specifically, Article 62 of the 2013 Entry-and-Exit Administration Law stipulates that aliens can be repatriated if they are in any of the four circumstances: first, they were required to leave the country within a prescribed time limit and did not do so; second, they are in a situation where entry is not allowed; third, they are in illegal residence and illegal employment; and fourth, they are in violation of this law or other laws and administrative regulations and must be repatriated.

The penalties for illegal residence and illegal employment are fines, detention, deportation within a time limit, repatriation, and expulsion. Article 322 of the 2017 Criminal Law stipulates the crime of overstepping the State (boundary). Violation is a serious matter punishable by imprisonment of up to one year, detention or regulation, and fines.

b) Legal Basis

At present, China does not have a systematic code for illegal immigration, and the relevant regulations are mainly scattered in some articles of the 2017 Criminal Law and the Entry-and-Exit Administration Law and relevant administrative regulations. Criminal law mainly refers to the 2017 Criminal Law. Other laws and regulations are:

- the *Nationality Law of the People's Republic of China*, passed in 1980;⁷²¹
- the *Regulation on the Exit and Entry Border Inspection of the People's Republic of China*, passed in 1995;⁷²² and
- the *Notice of the State Council on Strengthening the Administration of Entry-and-Exit Intermediary Activities*, passed in 2000.⁷²³

All are important legal documents on illegal immigration in China.

⁷²⁰ 《中华人民共和国刑法》 [*Criminal Law of People's Republic of China*] (PRC) National People's Congress, 1 July 1979. 《中华人民共和国刑法修正案（十）》 [*The Tenth Amendment of Criminal Law of People's Republic of China*] (PRC) Standing Committee of the National People's Congress, 4 November 2017.

⁷²¹ 《中华人民共和国国籍法》 [*Nationality Law of People's Republic of China*] (PRC) National People's Congress, Order No 8, 10 September 1980.

⁷²² 《中华人民共和国出境入境边防检查条例》 [*Regulation on the Exit and Entry Border Inspection of the People's Republic of China*] (PRC) State Council, 20 July 1995.

⁷²³ 《国务院关于加强出入境中介活动管理的通知》 [*Notice of the State Council on Strengthening the Administration of Entry-and-Exit Intermediary Activities*] (PRC) State Council, 11 September 2000.

Additionally, the 1986 *Law of the People's Republic of China on the Administration of Entry and Exit of Foreigners* was abolished and replaced by the *Entry-and-Exit Administration Law* in 2013. This is the first unified entry-and-exit management law, and some preliminary regulations have been made on illegal immigration, which has played a guiding role in solving the problem of illegal immigration in China. Moreover, the *Regulation on the Administration of the Entry and Exit of Foreigners of the People's Republic of China*, which came into effect on 1 September 2013,⁷²⁴ and the *Regulation on Procedures for Public Security Organs to Handle Administrative Cases*, which came into effect on 1 January 2013,⁷²⁵ also contain some provisions on illegal immigration. Therefore, China currently has preliminary regulations concerning illegal immigration, which provides a legal basis for further improving and refining the regulations for illegal economic immigration in China.

c) Theoretical Basis

Today the world is a world of increasing connections and a world of interdependence. In this world, international migration is a complex, real, and unavoidable issue. It involves not only the economy and society but also ethnic, identity, and citizenship factors, territorial boundaries, communities, global governance, and many other aspects, and is increasingly linked to the concept of security.⁷²⁶ In short, in the era of globalisation, migration involves more countries and people than ever before. In recent years, achievements of migration research have increased significantly. The *World Migration Report 2018* selected nine influential migration journals and the data show that 538 international migration papers were published in 2015 and 2016.⁷²⁷ Regarding global migration governance, a considerable number of academic works have been published.

As the pace of China's economic opening-up continues to accelerate, in the context of globalisation, more research is focused on immigration in China. In recent years, many academic works on illegal immigration in China have also been published, especially on illegal

⁷²⁴ 《中华人民共和国外国人入境出境管理条例》 [*Regulation on the Administration of the Entry and Exit of Foreigners of the People's Republic of China*] (PRC) State Council, 1 September 2013.

⁷²⁵ 《公安机关办理行政案件程序规定》 [*Regulation on Procedures for Public Security Organs to Handle Administrative Cases*] (PRC) MPS, 1 January 2013.

⁷²⁶ 吴琳 [Wu Lin], 《东南亚移民危机与移民治理：从安全化到区域化》 ['Southeast Asian Migration Crisis and Governance: From Security to Regionalisation'] (2017) 5 东南亚研究 *Southeast Asian Studies* 1–20.

⁷²⁷ IOM, *World Migration Report 2018* (IOM, 2018).

immigrants in particular areas of China such as Yunnan Province,⁷²⁸ Guangxi Province,⁷²⁹ Guangzhou,⁷³⁰ and Beijing.⁷³¹ Moreover, there are some works on illegal immigration in China.⁷³² Therefore, improving the legislation of illegal economic immigration has a certain theoretical basis.

Additionally, when formulating specific provisions, the following factors should be considered. First, each legal clause should be the result of balancing various stakeholders; otherwise, it will be difficult to enforce. It is necessary to consider who are the stakeholders and what the main views of the stakeholders are.

Second, enforceability after legislation is of immense significance—that is, the formulation of legal provisions needs to be based on the existing science and technology, staffing, and funding requirements. For example, to avoid illegal entry of people from neighbouring countries into China, it may be possible to consider setting up fence nets, monitoring equipment, and checking points on border roads that are connected to neighbouring countries. However, it should be noted that many other factors need to be considered, such as how many similar border roads there are, whether China currently has the corresponding technical means, how many personnel are needed, and whether China is able to afford the corresponding funds. Otherwise, it may not be feasible.

Third, the judiciary requires that the legal provisions of legislation be specific and clear rather than ambiguous and vague. The more specific the legal provisions, the easier it is for immigrants to understand them. At the same time, it is easier for law enforcement personnel to determine the behaviour of illegal immigrants, as well as how to enforce the law. When a

⁷²⁸ 张洁 [Zhang Jie], 《非法移民对我国非传统安全的影响及治理对策——基于云南边境地区的考察》 [‘The Impact of Illegal Immigration on China’s Non-traditional Security and Its Governance Countermeasures—Based on the Investigation of Yunnan Border Area’] (2019) 5 云南警官学院学报 *Yunnan Police Officer Academy* 124–28; 罗刚 [Luo Gang], *云南边境民族地区非法移民问题及其治理研究* [Research on Illegal Immigration and Its Governance in Yunnan Border Ethnic Areas] (Law Press, 2012).

⁷²⁹ 戴宏军 [Dai Hongjun] and 韦福安 [Wei Fuan] (n97).

⁷³⁰ 梁玉成 [Liang Yucheng] (n95).

⁷³¹ 张恒 [Zhang Heng], 《试论移民管理背景下外国人非法就业治理——以北京地区为例》 [‘On the Administration of Illegal Employment of Foreigners under the Background of Immigration Management: Taking Beijing as an Example’] (2020) 32(1) 湖南警察学院学报 *Journal of Hunan Police College* 18–24.

⁷³² 林孙俊 [Lin Sunjun], 《当代中国入境非法移民主要类型及治理研究》 [‘Study on the Main Types and Governance of Illegal Immigration in Contemporary China’] (PhD Thesis, 中共中央党校 [Central Committee Party School], 2019); 宋全成 [Song Quancheng], 《非法外国移民在中国的现状、症结与对策》 [‘Illegal Immigrants in China: The Present Situation, Crux and Countermeasures’] (2015) 1 山东大学学报 (哲学社会科学版) *Journal of Shandong University (Philosophy and Social Sciences)* 55–63.

dispute occurs, the court is more likely to make the correct decision. This is also a way to limit discretion, which is discussed later in this chapter.

2 The Enactment of a Uniform Chinese Migration Law

a) Benefits of, and Favourable Conditions for, a Uniform Migration Law

At present, concerning the regulation of illegal economic immigration, there are overlaps or even conflicts between the different levels of laws and regulations, resulting in the sabotage of the integrity of the national legal system. The enactment of a uniform scheme of migration law will avoid legal conflicts and provide a practical means of governing illegal economic immigration.

Reform of the administrative system is difficult because it entails partial reform of government departments. However, this challenge has largely been overcome with the establishment of the National Immigration Administration, which has laid a useful foundation for enacting a uniform migration law. Therefore, the enactment of a uniform Chinese migration law is feasible and logical.

b) Legislative Purpose of Chinese Migration Law

The purpose of a uniform migration law would be to regulate illegal economic immigration by unifying entry-and-exit control, safeguarding national security and public order, governing migration matters, and providing migration guidance. To achieve this, the principles of non-discrimination, openness, and transparency would need to be adhered to. Policies would need to be formulated through a process that is inclusive of the stakeholders in the migration process, especially illegal economic immigrants. Policies should reflect the activities and interests of vulnerable groups—that is, illegal economic immigrants. This may mean decentralising migration support services and locating government services, such as ‘one-stop shops’ that provide consulting and information services in rural areas, thereby avoiding illegal migration activities and promoting migration lawfully and conveniently.

3 Factors to Consider

When formulating specific legal provisions, the following factors need to be considered.

a) Protect Human Rights

As mentioned above, consideration of human rights should run through all the provisions of the law. Despite their illegal status, illegal economic immigrants still have rights, and these

require protection. The interviews revealed that during the process from discovery to repatriation, law enforcement officers pay great attention to protecting the rights of illegal economic immigrants, such as offering them a free translation service, as well as providing them with food and accommodation.⁷³³ However, there are still some problems that need resolution.

First, illegal immigrants who are the victims of crime from other illegal immigrants or local people will not report the crime due to their illegal identity. As a result, their rights cannot be guaranteed. For example, in cases of robbery, fraud, theft, and other financial cases, illegal immigrants from Africa usually target their compatriots because people in the same community are familiar with each other and the victims will not report the crimes because they fear and mistrust the Chinese police.⁷³⁴ Moreover, taking Singapore as an example, some Singaporeans discriminate against and even abuse illegal immigrants. It is worth considering how to protect their rights from being violated.

Second, in some areas where illegal immigrants are found, they are directly repatriated, even if they have married a Chinese citizen and had children. However, this does not solve the problem. They will still enter illegally the next day because they cannot tolerate family separation.⁷³⁵ Moreover, Singapore's experience teaches us that preventing Malaysians from reuniting with their families will only lead to more illegal immigrants. After all, reuniting with one's family is a basic human right.

Third, for the special illegal immigrants who have lived in China for a long time and believe that they are Chinese, forced repatriation is not the best solution regardless of whether they have built a family with a Chinese citizen or not. Therefore, it may legalise them and stipulate that their basic rights, such as medical insurance, be considered.

b) Limit Discretion

Discretionary power is one of the core elements of modern administrative power. Illegal immigration governance often involves administrative discretionary power, including factual judgment, behavioural judgment, and methods of execution. In practice—due to the obstacles of traditional administrative thinking, incomplete legal basis, improper interests, and the poor

⁷³³ This information was given by the participant A from the public security bureau on 28 March 2019.

⁷³⁴ 《广州非洲籍非法移民的特征研究》 [Study on the Characteristics of Illegal Immigration in Guangzhou] (24 September 2014).

⁷³⁵ 罗刚 [Luo Gang] (n29) 174.

professional quality of some law enforcement personnel—there are instances of administrative negligence and oversteps, as well as abuse of power in the exercise of the discretionary power of illegal immigration governance.⁷³⁶ To ensure law enforcement personnel execute their role lawfully, it is necessary to pay attention to the enforcement procedures and restrict administrative power by regulating the exercise of power. Specifically, the first is prior supervision—that is, the legal provisions should be specific and clear to avoid the lack of an enforcement basis, such as specifying what the serious circumstances are; and to restrict discretion, such as specifying the circumstances under which fines should be imposed, as well as the number of fines, and the circumstances under which detention measures should be taken. The second is on-the-spot supervision. Based on the *Discretion Standards for Violations of the Exit-and-Entry Administration Law of the People's Republic of China*,⁷³⁷ the law enforcement elements should be reasonably considered to prevent the abuse of discretionary power and achieve reasonable administration. The third is follow-up supervision, which is to refine and improve the *Regulation on the Evaluation of Law Enforcement Quality of Public Security Organs*,⁷³⁸ *Provisions on the Responsibility of Law Enforcement Faults of the People's Police of Public Security Organs*⁷³⁹ and other related content. This will strengthen the quality control of law enforcement and improve the system of accountability and form a standardised and reasonable performance evaluation system.

c) Balance Stakeholders

This requires a flexible policy to introduce foreign labour in a targeted manner. For example, some border areas in China require large numbers of seasonal and low-skilled labourers. If the policy is applied in strict accordance with current Chinese labour policies—such as ‘prohibiting individual economic organisations and individual citizens from hiring foreigners’,⁷⁴⁰ or

⁷³⁶ 白永峰 [Bai Yongfeng], 《论移民管理改革背景下的外国人出入境安全风险防控》 [‘Discussion on the Security Risk Prevention and Control for Entry-and-Exit Administration of Foreigner under the Background of Immigration Management Reform’] (2019) 3 湖北警官学院学报 *Journal of Hubei University of Police* 120–33.

⁷³⁷ 《违反〈中华人民共和国出境入境管理法〉行为的处罚裁量基准》 [*Discretion Standards for Violations of the Exit-and-Entry Administration Law of the People's Republic of China*] MPS, 20 May 2017.

⁷³⁸ 《公安机关执法质量考核评议规定》 [*Regulation on the Evaluation of Law Enforcement Quality of Public Security Organs*] MPS, 4 January 2016.

⁷³⁹ 《公安机关人民警察执法过错责任追究规定》 [*Provisions on the Responsibility of Law Enforcement Faults of the People's Police of Public Security Organs*] MPS, 4 January 2016.

⁷⁴⁰ 《人力资源社会保障部关于修改〈外国人在中国就业管理规定〉的决定》 [Decision of Ministry of Human Resources and Social Security on Amending the Regulation on the Employment of Foreigners in China] (PRC) Ministry of Human Resources and Social Security, 13 March 2017, art 33.

‘employers should employ foreigners for positions that have special needs, and where there is a temporary shortage of suitable candidates in the domestic country, while not violating the relevant state regulations’⁷⁴¹—this will not only cause difficulties in local economic development but will not solve the problem of a large influx of illegal economic immigrants. On the contrary, if the policy of introducing low-skilled labourers is relaxed, this will satisfy the interests of various stakeholders. First, it can promote local economic development; second, it avoids the harms caused by the influx of large numbers of illegal immigrants, such as bringing infectious diseases and affecting national health; third, it enables those potential illegal immigrants to enter China legally, thereby protecting their rights and interests.

Also, the punishment for employers can be increased appropriately while paying attention to protecting the rights of illegal economic immigrants. According to Singapore’s experience, among the relative stakeholders, illegal economic immigrants are often ignored. However, harsh legal provisions and a difficult living environment will not prevent the arrival of illegal economic immigrants but rather increase the harm to both legal immigrants and illegal immigrants. Therefore, legislators should balance the interests of all parties, especially paying attention to the protection of illegal economic immigrants.

In addition, the relationship between various stakeholders involved in illegal economic immigration in China’s context should be noted. Before discussing the relationship between different stakeholders, it is necessary to clarify the correct view of justice and benefit that was put forward by President Xi Jinping.⁷⁴² President Xi Jinping’s important statement on the correct view of justice and benefit has become the value orientation for the Chinese government to deal with foreign affairs. It can be divided into the view of national interest, the thought of international relations, and the principle of morality and justice.⁷⁴³

First, the core national interests are the bottom line and must be effectively protected.⁷⁴⁴ National interests are the essential core of international relations. Among the various factors

⁷⁴¹ 《人力资源社会保障部关于修改〈外国人在中国就业管理规定〉的决定》 [Decision of Ministry of Human Resources and Social Security on Amending the Regulation on the Employment of Foreigners in China] (PRC) Ministry of Human Resources and Social Security, 13 March 2017, art 6.

⁷⁴² 《正确义利观》 [Correct View of Justice and Benefit] 人民网 [People’s Daily Online] (Web Page, 06 September 2017) <<http://theory.people.com.cn/n1/2017/0906/c413700-29519660.html>>.

⁷⁴³ 毕霞 [Bi Xia] and 韩亚琦 [Han Yaqi], 《习近平关于正确义利观重要论述的多维阐释》 [‘The Multidimensional Interpretation of Xi Jinping’s Important Statement on the Correct View of Justice and Benefit’] (2020) 22(4) 河海大学学报（哲学社会科学版） *Journal of Hehai University ((Philosophy and Social Sciences Edition)* 17–23.

⁷⁴⁴ Ibid.

that constitute national interests, national sovereignty, national security, and material productivity occupy the prominent position. Among them, sovereignty is the prerequisite, security is the foundation, and the development of productivity is the essential core.⁷⁴⁵ Regarding national sovereignty, in the international community, a country must have independent sovereignty, otherwise it will not be able to interact with other countries on an equal footing.⁷⁴⁶ Regarding national security, people's security is the foundation and must be put into the first place.⁷⁴⁷ Regarding material productivity, it is the driving force and fundamental reason that determines national interests.⁷⁴⁸ National sovereignty, national security, and the development of productivity are the core elements of national interests, which determine that a country must take the national core interests as the bottom line in international communication.

Second, in this era of globalisation, international relations are playing an increasingly important role and should be taken seriously.⁷⁴⁹ The thought of international relations advocates that when handling international affairs, countries must protect the fundamental interests of their own people while also take into account the common interests of people all over the world.⁷⁵⁰ In 2013, President Xi Jinping responded to China's relationship with the world for the first time in a joint interview with the BRICS Media, clarifying China's international positioning as a responsible power. As China's national strength continues to increase, China will assume more international responsibilities and obligations within its capacity.⁷⁵¹ China has been committed

⁷⁴⁵ 张亚东 [Zhang Yadong] and 张鑫 [Zhang Xin], 《论习近平新时代中国特色社会主义思想》 ['Xi Jinping's Thoughts on Diplomacy of Great Powers with Chinese Characteristics in the New Era'] (2020) 25(05) 湖南工业大学学报(社会科学版) *Journal of Hunan University of Technology (Social Science Edition)* 23–29; 毕霞 [Bi Xia] and 韩亚琦 [Han Yaqi], 《习近平关于正确义利观重要论述的多维阐释》 ['The Multidimensional Interpretation of Xi Jinping's Important Statement on the Correct View of Justice and Benefit'] (2020) 22(4) 河海大学学报(哲学社会科学版) *Journal of Hehai University ((Philosophy and Social Sciences Edition))* 17–23.

⁷⁴⁶ 毕霞 [Bi Xia] and 韩亚琦 [Han Yaqi] (n743).

⁷⁴⁷ 刘畅 [Liu Chang], 《我国国家安全工作发展历程与经验总结》 ['Summary of the Development Process and Experience of China's National Security Work'] (2021) 13 法制与社会 *Legal System and Society* 82–84.

⁷⁴⁸ 毕霞 [Bi Xia] and 韩亚琦 [Han Yaqi] (n743).

⁷⁴⁹ 张亚东 [Zhang Yadong] and 张鑫 [Zhang Xin], 《论习近平新时代中国特色社会主义思想》 ['Xi Jinping's Thoughts on Diplomacy of Great Powers with Chinese Characteristics in the New Era'] (2020) 25(05) 湖南工业大学学报(社会科学版) *Journal of Hunan University of Technology (Social Science Edition)* 23–29

⁷⁵⁰ 毕霞 [Bi Xia] and 韩亚琦 [Han Yaqi] (n743).

⁷⁵¹ 《习近平接受金砖国家媒体联合采访》 [Xi Jinping Accepts A Joint Interview with the BRICS Media] 人民网 [People's Daily Online] (Web Page, 20 March 2013) <<http://cpc.people.com.cn/n/2013/0320/c64094-20845747.html>>.

to playing the role of a responsible country in international affairs, demonstrating China's courage to take responsibility for the development and prosperity of the world. In general, China is not only committed to the realisation of the Chinese dream, but also more actively taking on international responsibilities within its capacity for maintaining international order, seeking win-win cooperation, and building common security and a community with a shared future for the world.⁷⁵²

Third, morality and justice are the basic principles of the thought of international relations.⁷⁵³ Morality and justice, two important factors that maintain the stability and development of the international society, are often missing in actual international communication. It is necessary to make the simple moral and justice norms that should be followed in private relations become the supreme norms among nations.⁷⁵⁴ This reflects the strong demand for morality and justice in the field of international relations.

Therefore, when dealing with international affairs, the core national interests should be the bottom line, morality and justice should be the basic principles, and the international relations should be taken into consideration. After all, in this era of globalisation, it is impossible for any country to develop independently from the international community. A new type of international relations should be built which is to achieve win-win outcome through cooperation and build a community with a shared future for the world.

The relationship among the various stakeholders involved in illegal economic immigration in China should also follow this rule. To be specific, the Chinese government should put national security into the first place, that is, Chinese citizens. On the premise of ensuring national security, the factors of the national economy should be considered, that is, Chinese industries. At this time, the Chinese government should abide by the principle of mutual benefit and win-win results. While developing the domestic interests, more consideration and care should be given to the interests of other countries. Moreover, what is easily overlooked is the interests of illegal immigrants themselves. However, according to the basic principles of morality and justice, the interests of illegal immigrants should be given more attention.

⁷⁵² 李艳平 [Li Yanping], 《习近平的国际责任观研究》 [‘Research on Xi Jinping’s International Responsibility View’] (华南理工大学 [South China University of Technology], 2017)

⁷⁵³ 毕霞 [Bi Xia] and 韩亚琦 [Han Yaqi] (n743).

⁷⁵⁴ Ibid.

Combining the empirical analysis with the theoretical analysis, it can be seen from the interview that the reason of illegal economic immigration from Africa in Guangdong Province is mainly because the Chinese government places too much emphasis on economic interests and fails to put national security into the first place.⁷⁵⁵ It shows that an important way to solve the problem of illegal economic immigration in China should be to expand the channels of legal immigration, thereby reducing illegal immigration, which will be discussed below. In so doing, the Chinese government can not only relieve national security concerns, such as illegal immigrants carrying infectious diseases, but also benefit the economic development of China and the relevant countries. At the same time, the rights, and interests of immigrants themselves can also be protected by law.

B Enforcement

In addition to the legislation, enforcement is also of great significance. The old laws are constantly being revised and improved, and the new laws are always being promulgated and implemented in time. However, the discrepancy between formal laws and informal practice always exist.⁷⁵⁶ In recent years, laws and regulations that are difficult to implement have emerged one after another, ranging from the difficult-to-implement clause that ‘people should visit their parents regularly’,⁷⁵⁷ the difficult-to-change ‘Chinese-style crossing the road’,⁷⁵⁸ the

⁷⁵⁵ This information was given by the migration lawyer V on 5 May 2019. More information can be seen on page 87.

⁷⁵⁶ 周洁 [Zhou Jie], 《说说那些难以落地的法律法规》 [‘Talk About the Laws and Regulations That Are Difficult to Implement’] (2014) 1 人民公安 *People’s Police* 8–9.

⁷⁵⁷ According to Article 18 of the *Law of the People’s Republic of China on the Protection of the Rights and Interests of the Elderly*, family members who live separately from the elderly should visit or greet the elderly frequently. However, this clause is difficult to enforce. On one hand, people cannot visit their parents for many reasons, and parents usually do not sue their children for this. On the other hand, it is unclear whether or not the issue can be really resolved due to the court’s decision. See 《“常回家看看”为何这么难》 [Why Is It So Hard for People to Visit Their Parents Regularly] (18 January 2017) <https://www.sohu.com/a/124613078_118918>. 《中华人民共和国老年人权益保障法（2012 修订）》 [*People’s Republic of China on the Protection of the Rights and Interests of the Elderly*] (PRC) Standing Committee of the National People’s Congress, 28 December 2012. 《中华人民共和国老年人权益保障法（2018 修订）》 [*People’s Republic of China on the Protection of the Rights and Interests of the Elderly*] (PRC) Standing Committee of the National People’s Congress, 29 December 2018.

⁷⁵⁸ ‘Chinese-style crossing the road’ refers to the phenomenon that some Chinese pedestrians ignore traffic lights and cross the road. That is, they cross the road as long as there are enough pedestrians regardless of traffic lights. It attracted social attention in 2013. Since then, traffic departments in Beijing, Zhejiang and other places have carried out actions to incorporate the governance of pedestrian and non-motor vehicle traffic violations into the focus of traffic order rectification, through measures such as exposure, correction, education, criticism, and punishment. However, due to the non-cooperation of the public, it is difficult to change this style. See 周洁 [Zhou Jie] (n756).

garbage classification that may be difficult to be put in practice,⁷⁵⁹ to the incomplete implementation of the Plastic Restriction Order.⁷⁶⁰ While there are many laws and regulations, this is by no means to say that the problems covered by thesis formal laws and regulations can be resolved in practice.

Thus, the solution to the problem of illegal economic immigration requires not only improving legislation but also strengthening enforcement. Admittedly, in practice, there are many clauses that are difficult to enforce, behind which the reasons are also various. It is nearly impossible to resolve all problems by strengthening enforcement. Therefore, this thesis hopes to resolve some common problems in practice by making the following recommendations.

1 *Organisational Model*

To deepen the reform of state institutions and introduce a national immigration-management system, China officially established the National Immigration Administration in April 2018, marking a new stage in China's immigration and entry-and-exit management. At the same time, China emphasised that it was necessary to adhere to the bottom-line of entry-and-exit management and port-security risk, promote management services at a high level, and improve the rule of law. Improving the rule of law is a real need for immigration and entry-and-exit management in the future.

At present, China's immigration management has problems such as poor organisational structure, lack of supervision mechanisms, and an incomplete guarantee system. Therefore, it is urgent to build a better model. For this, it is necessary to use rule-of-law thinking. While strengthening national security capabilities and meeting the needs of foreigners' entry and exit, the legal system, organisational system, supervision system, and guarantee system of immigration management should be further improved.

⁷⁵⁹ As early as 2000, the Ministry of Construction designated Beijing, Shanghai, Nanjing, Hangzhou, Guilin, Guangzhou, Shenzhen, and Xiamen as pilot cities for garbage classification. But twenty years later, these trials all ended in failure due to a lot of reasons. See 《垃圾分类难解之结》 [The Inexplicable Knot of Garbage Classification] (25 March 2020) <<https://www.zhaoqt.net/lishihuizuo/286216.html>>.

⁷⁶⁰ Due to the challenge of white pollution, the Plastic Restriction Order came into being. The *Notice of the General Office of the State Council on Restricting the Production, Sale and Use of Plastic Shopping Bags* was implemented from 1 June 2008. However, with the passage of time, the number of used plastic bags has not decreased but increased. Due to various reasons, it is difficult to implement the Plastic Restriction Order. See 马明凯 [Ma Mingkai], 《“限塑令”难执行的原因与对策研究》 [‘Research on the Reasons and Countermeasures for the Difficulty in Implementing the Plastic Restriction Order’] (2018) 19 管理观察 *Management Observation* 52–54. 《国务院办公厅关于限制生产销售使用塑料购物袋的通知》 [Notice of the General Office of the State Council on Restricting the Production, Sale and Use of Plastic Shopping Bags] (PRC) The State Council, 1 June 2008.

In other words, to build an organisational model, the National Immigration Administration may first set up specific and clear tasks and objectives that accurately reflect policy intentions (legal system); second, it should draw up a plan to assign tasks to subordinate units (organisational system); third, it can use objective means to evaluate the performance of subordinate units (supervision system); and fourth, it may have a management and control system and social sanctions that ensure the subordinate units can take responsibility for their tasks (guarantee system).

a) Legal System

The inspection of foreigners' entry-and-exit documents, information input, and accommodation registration are the main means adopted by the traditional governance model, while the construction of a process management model that gives full play to service, management, and security is one of the trends of innovation in the immigration management model. First, the National Immigration Administration should change the concept of foreigners' management, scientifically formulate immigration policies, standardise the visa management system, and facilitate the entry and exit of foreigners. Secondly, it should standardise entry-and-exit border inspection, improve security-risk prevention and control capabilities of entry-and-exit border-inspection agencies, and establish an efficient entry-and-exit mechanism. Thirdly, it should share information resources for entry and exit of foreigners and strengthen inter-regional and international cooperation based on dynamic and digital management within the territory. This innovative model for entry and exit of foreigners is a manifestation of the deepening of the standardisation of law enforcement, which complies with the requirements of China to establish a system-complete and content-standardised law enforcement system. Such a system will be able to deal effectively with the problems of poor organisation mechanism, weak law enforcement ability, and a poor law enforcement team in immigration management under the current system.

b) Organisational System

(i) Set up a specialised legislative coordination agency for immigration management

This agency guarantees the advancement of other related legislative work supporting the Entry-and-Exit Administration Law. For China's current Entry-and-Exit Administration Law, it involves visa management for foreigners coming to China, permanent residence, foreigners' employment and international students working in China, entry-and-exit border inspection,

illegal immigration, and refugee management, which are general provisions and urgently need to be followed up with supporting laws and regulations.

With the establishment of the National Immigration Administration, setting up subordinate immigration units can be considered. These units can handle the overall coordination functions of immigration and entry-and-exit legislation and solve the problem of lagging supporting legislation or difficulty in enforcing legislation due to the heavy legislative workload.

As well, the agency needs to refine and improve legislation in specific areas. The current legislative system requires scientific and democratic legislation, with an emphasis on the quality of legislation and the implementation effect. In the area of entry-and-exit management of foreigners, various legislative tasks can be promoted in stages according to actual needs. For instance, it is possible to focus on promoting the legislation of the *Regulation on the Entry-and-Exit Frontier Inspection*, the *Regulation on the Permanent Residence of Foreigners*, the *Regulation on the Administration of Foreigners Working in China*, and other relevant and urgent legislative tasks. Also, the agency coordinates the formulation of employment guidance for foreigners and legislation on the management of difficult immigration matters.

(ii) *Set up a specialised agency to optimise visa management*

Academia has long been calling for reform of the visa system, especially for relaxing visa restrictions and refining visa categories, while safeguarding the rights and interests of entry-and-exit personnel. However, it is difficult to realise because there is no specialised agency to promote it. Therefore, the implementation of a vertical management system and clear business coordination and division are among the real needs facing the reform of the visa system.⁷⁶¹ Taking full advantage of the legal status of the National Immigration Administration in the field of immigration and entry-and-exit management to solve the current problem of decentralised visa management functions can be an effective response.

(iii) *Standardise port inspection*

In the process of entry and exit of foreigners, the verification of entry information is the most important inspection-and-control task and management method in entry-and-exit border inspection. Efforts to prevent illegal immigration need to attach great importance to and improve the quality of information. At present, the number of foreigners that need to be

⁷⁶¹ 翁里 [Weng Li] and 戴一晨 [Dai Yichen], 《论国家安全与签证制度改革》 [‘National Security and Visa System Reform’] (2014) 4 四川警察学院学报 *Journal of Sichuan Police College* 1–7.

inspected by border-inspection staff is constantly increasing, so it is no longer possible to prevent and control entry-and-exit security risks by relying on manpower alone. To balance service, management, and the prevention and control of security risks, information technology needs to be used to expand the verification function of foreigners' entry information while regulating border inspection and law enforcement. This includes improving the entry pre-inspection mechanism, such as an in-depth study of the *Implementation Measures for the Prediction and Pre-inspection of Personnel Information Carried by Entry-and-Exit Aircraft*, and improving the information verification mechanism, such as the use of information technology to complete the identity verification, trajectory analysis, and risk evaluation.⁷⁶²

(iv) *Improve the repatriation system*

Repatriation, as an important mandatory administrative measure for the management of illegal immigrants, has played a significant role in reducing security risks and decreasing the number of illegal immigrants. However, since the repatriation system is still controversial in a series of basic issues such as the applicable conditions of repatriation, the subject of implementation, and the repatriation procedure, the utilisation rate of the repatriation measure is low.⁷⁶³ Further clarification of the function of the repatriation system and exploration of the applicable rules of repatriation would not only ensure that the entry-and-exit border inspection agencies performed their legal responsibilities but would also protect the rights and interests of foreigners.

c) *Install a Strong Supervision System*

The management of foreigners' entry and exit and illegal immigration management cannot be separated from a strong supervision system. The *Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law* (the Decision), reviewed and approved by the Fourth Plenary Session of the Eighteenth Central Committee of the Communist Party of China, pointed out that it is necessary to:

- establish a system for recording the entire process of administrative law enforcement to clarify specific operating procedures;
- strictly implement a legal review system for major law enforcement decisions;

⁷⁶² 白永峰 [Bai Yongfeng] (n736).

⁷⁶³ 郝鲁怡 [Hao Luyi] (n184).

- establish and improve the benchmark system of administrative discretion, refine the standard of administrative discretion, and standardise the scope, type, and range of discretion;
- fully implement the administrative law enforcement responsibility system and strictly determine the enforcement responsibility and accountability mechanism of law enforcement personnel from different departments and positions.⁷⁶⁴

The Decision provides policy support and guarantees the establishment of a supervision system. In terms of operation, the supervision system can be strengthened from both internal and external aspects. Internal supervision would regulate the law enforcement procedures for managing the entry and exit of foreigners. This is mainly reflected in restricting the discretion of law enforcement officials. As mentioned above, it includes prior supervision, on-the-spot supervision, and follow-up supervision. It is designed to restrict law enforcement personnel's abuse of power by standardising law enforcement procedures. External supervision would expand legal remedies and citizen participation. The foreign-related attributes and the principle of sovereignty can be reasons for reducing the judicial rights of foreigners. However, administrative disputes arising from the process of private entry and exit of foreigners should be given necessary and sufficient remedies. The principle of sovereignty should be adhered to in state acts, which means that the reduction of the rights of foreigners based on state sovereignty should be reflected in the national obligations and the principle of reciprocity in international law, such as diplomatic acts or official acts.⁷⁶⁵ Moreover, the rule of law should be adhered to in giving adequate legal remedies to foreigners. This not only protects the rights of foreigners but also regulates administrative power.⁷⁶⁶ In the process of entry-and-exit management, the lack of remedies can easily lead to abuse of administrative power, which is not conducive to a healthy legal environment.

The settlement of legal issues should follow legal rules. Adhering to power balance and referring legal issues to the judiciary agency are the most effective mechanisms for supervising administrative power. Therefore, for disputes arising in the process of managing the entry and exit of foreigners, foreigners should be given full litigious rights. In other words, to implement

⁷⁶⁴ Fourth Plenary Session of the Eighteenth Central Committee of the Communist Party of China, 'Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law' (23 October 2014).

⁷⁶⁵ 白永峰 [Bai Yongfeng] (n736).

⁷⁶⁶ Ibid.

the *International Covenant on Civil and Political Rights* and related international laws, it is necessary to establish the hearing procedure as well as administrative reconsideration and judicial rulings.⁷⁶⁷

Furthermore, strengthening citizen participation is an important way of external supervision. This requires attention to the disclosure of law enforcement information and procedures. When exercising administrative power, law enforcement personnel are required to disclose matters related to administrative authority to the public (except state secrets, personal privacy, and trade secrets). Through the disclosure of administrative matters, administrative counterparts can effectively participate in the administrative management process, protect their own rights and interests, supervise, and restrict the discretionary power, and improve the efficiency of law enforcement agencies.⁷⁶⁸

d) Install a Strong Guarantee System

The guarantee system for entry-and-exit management of foreigners can be improved in terms of speeding up the construction of the information platform and cultivating professional teams. Speeding up the construction of the information platform would promote efficiency. An information platform is one of the important methods to help public security organs standardise law enforcement, and its scope of application covers the entire process of law enforcement. Currently, China's border-inspection agencies use more than 20 information databases as common platforms for checking entry-and-exit information, and the information can only be queried by people with corresponding authority.⁷⁶⁹ For foreigners' entry-and-exit inspections, which emphasise timeliness, the current information system can hardly meet the dual needs of safety and efficiency. As a result, accelerating the construction of information resource sharing and a unified entry-and-exit information platform is a necessary way to promote the informatisation of the law enforcement process. At the same time, the construction of the information platform requires step-by-step implementation of cross-departmental information

⁷⁶⁷ 张惠德 [Zhang Huide], 《论国际法视角下的我国外国人出入境管理》 ['On the Management of Entry and Exit of Foreigners from the Perspective of International Law'] (Research Paper, 国际移民法的新发展和中国移民法的建设研讨会 ['Seminar on the New Development of International Migration Law and the Construction of Chinese Migration Law'], 1 May 2009).

⁷⁶⁸ Ibid.

⁷⁶⁹ 白永峰 [Bai Yongfeng] (n736).

collaboration and sharing mechanisms. Done well, it will deal more effectively with the technical problems arising from the collection and exchange of related information.⁷⁷⁰

Importance should be attached to cultivating professional talents and building a professional law enforcement team. Enhancing the professional abilities of law enforcement personnel and providing abundant professionals are the basic conditions for immigration and entry-and-exit management. The establishment of the National Immigration Administration has further clarified China's immigration and entry-and-exit management functions, and the characteristic of specialisation is more obvious. Therefore, the professional level of the law enforcement team needs improvement. This requires attention to the training of law enforcement officers. For example, application-oriented business training and law enforcement examinations can be carried out to enhance business quality and the emergency response capability of front-line law enforcement personnel to meet the current law enforcement requirements.

Moreover, it is necessary to ensure an adequate supply of professional talents. For instance, professionals could be trained in immigration and entry-and-exit management at a new body called the National Immigration Administration Institute. This would provide trainees with conditions and opportunities for systematic theoretical knowledge and business learning. They could also carry out theoretical research and policy analysis around the field of immigration and entry-and-exit management, to realise a combination of theoretical study and practical research.

2 The Role of Local Governments

Given China's vast territory, the economy, geography, and number of foreigners (including illegal immigrants) vary greatly from place to place. This means unified management does not always conform to the actual situation on the ground. Therefore, it is necessary to grant local governments more power to measure their own situation and formulate countermeasures suitable for them.

First, in addition to international cooperation at the national level, local governments can conduct international cooperation, which is more in line with their actual conditions and interests. For instance, in 2002, a delegation of the Yunnan Provincial Procuratorate visited the Lao Cai Procuratorate of Vietnam upon invitation and signed the *Meeting Minutes between the Delegation of the Yunnan Provincial People's Procuratorate of the People's Republic of China*

⁷⁷⁰ Ibid.

and the Lao Cai Provincial People's Procuratorate of the Socialist Republic of Vietnam (Meeting Minutes). Since then, the Hekou County Procuratorate and the neighbouring Lao Cai Municipal Procuratorate in Vietnam have been authorised to liaise with each other. They have earnestly implemented the requirements of the Meeting Minutes and strengthened cooperation, which has not only maintained the broader social and economic order but also laid the foundation for combating illegal immigration.

Second, local governments can formulate specific measures based on their actual conditions. For instance, the Lincang border guard detachment, which guards the ethnic minority areas on the border in Yunnan Province, has made great strides in illegal immigration control. From January to July 2011, a total of 890 illegal entry-and-exit persons were arrested and 167 kilograms of various drugs were found, which effectively controlled illegal entry-and-exit activities at the border.⁷⁷¹ Their main approaches are to carry out irregular inspections of enterprises and institutions, stations, construction sites, and entertainment venues where illegal immigrants are likely to hide, and carefully register and investigate the temporary immigrants. At the same time, checkpoints are also set up on important traffic arteries in the jurisdiction to check people and vehicles entering the border area. Moreover, they have built an information-monitoring network on the frontier line, and installed video surveillance systems at the first-line border ports to form a digital communication system for 24-hour border defence inspections and control, giving illegal immigrants nowhere to hide.⁷⁷²

C International Cooperation

1 Basis of International Cooperation

Illegal migration is an international activity involving diplomacy and international cooperation as well as the judiciary. Moreover, illegal migration is a deep-seated problem derived from political, economic, and social factors. It cannot be resolved by using a single method. Therefore, it is necessary to strengthen labour migration cooperation while cracking down on illegal migration. The most important basis for migration cooperation is that both sending countries and receiving countries have the willingness to cooperate. Taking Russia and Central Asian countries as an example:

⁷⁷¹ 罗刚 [Luo Gang] (n29) 212.

⁷⁷² Ibid 213.

a) Russia's Willingness to Cooperate

Labour migration from Central Asia is important to supplement Russian labour shortages, ensure the balance of the Russian population, and promote economic development. The Russian labour market not only needs legal immigrants but also has a certain demand for illegal immigrants. Hence, Russia is willing to strengthen labour migration cooperation with relevant Central Asian countries, to improve professional skills and cultural qualities of immigrants, legalise more illegal immigrants, facilitate the government to regulate immigrants, and exclude potential threats to social stability.

A policy of severely cracking down on illegal immigration may cause dissatisfaction from related countries in Central Asia, undermine relations between countries, and hinder the development of the CIS sub-regional integration process. Thus, on the issue of illegal migration, the attitude of cooperation with source countries not only helps reduce illegal migrants but also develops healthy relations between the affected countries.

b) Some Central Asian Countries Have the Willingness to Cooperate

Tajikistan, Kyrgyzstan, and Uzbekistan rely heavily on the Russian labour market. However, illegal migrants can endanger labour cooperation between Central Asian countries and Russia. Therefore, Central Asian countries need to formulate corresponding adjustment measures that accord with Russian migration policies, strengthen migration cooperation with Russia, protect the work rights of domestic people, and curb the development of illegal migration.

The economies of Tajikistan, Kyrgyzstan, and Uzbekistan are relatively dependent on foreign exchange income from labour services. Any changes in Russia's immigration policy are likely to have a huge impact on the political and economic life of these three countries. In 2008, Russia's foreign exchange into Tajikistan was about USD2.5 billion, accounting for 45 per cent of domestic GDP. From 2009 to 2010, this number declined due to the world economic crisis. In 2011, Russia's foreign exchange into Tajikistan reached USD2.96 billion, accounting for 47 per cent of domestic GDP, and even exceeded its fiscal revenue.⁷⁷³ In 2012, its foreign exchange income accounted for 48 per cent of domestic GDP.⁷⁷⁴ Tajikistan is highly dependent on the foreign exchange of labour migration.

⁷⁷³ 曹伊 [Cao Yi] (n699).

⁷⁷⁴ Ibid.

Nearly one-third of the Kyrgyz workforce is employed abroad, and remittances are the country's largest source of foreign exchange earnings.⁷⁷⁵ In the first decade of the 21st century, remittances grew very rapidly as the Russian economy boomed and its labour force aged quickly.⁷⁷⁶ Owing to its large area, abundant natural resources, and a higher economic development level than Tajikistan and Kyrgyzstan, the foreign exchange income of Uzbekistan does not account for a large proportion of national GDP, only about 20 per cent.⁷⁷⁷ However, in terms of the number of migrants, Uzbekistan has the largest number of labour migrants in Russia compared to other Central Asian countries.⁷⁷⁸ Therefore, the economies of Kyrgyzstan and Uzbekistan also depend on Russia to greater and lesser extents.

Russia's severe crackdown on illegal immigration has had a great impact on the economic development and social stability of Central Asian countries. Most illegal migrants from Central Asia are unable to find jobs when they return to their home countries. Along with the decline in the employment rate is the decline in income and living standards and the rise in crime rates, as well as the surge in people's dissatisfaction with society. The accumulation of these dissatisfactions may cause social instability. Neither Russia nor Central Asian countries want to see that.

Given the importance of foreign exchange—from migrants to the economic development of Central Asian countries and the increasingly stringent Russian immigration policies—Central Asian countries must strengthen labour-migration cooperation with Russia, based on promoting labour employment in their own countries. It must also assist people in a way that accords with legal and standardised migration procedures.

2 Factors Affecting International Cooperation

With the proliferation of illegal migrants in recent decades, some countries have been searching for greater cooperation to respond to the challenges that illegal migration poses to countries of origin, host countries, illegal migrants, and their families. While seeking greater cooperation, there has been no definitive consensus on international cooperation regarding how to take collective action to achieve basic goals such as reducing illegal migration, eliminating deaths

⁷⁷⁵ Takashi Yamano, et al, *Kyrgyz Republic: Improving Growth Potential* (Asian Development Bank, 2019).

⁷⁷⁶ Ibid.

⁷⁷⁷ 曹伊 [Cao Yi] (n699).

⁷⁷⁸ Anna Di Bartolomeo, Shushanik Makaryan and Agnieszka Weinart, *Regional Migration Report: Russia and Central Asia* (European University Institute, 2014).

and abuses in transit, and curbing the spread of smuggling and organised crime. This thesis hopes to provide some inspiration for strengthening cooperation by analysing the factors that affect international cooperation.

First, the standpoints of sending and receiving countries are different, and their needs are different too. Some receiving countries (such as Russia and China) want to introduce highly skilled talents, while the requirements for general foreign workers and low-skilled labourers are rigorous. However, highly skilled talents are also strongly desired by sending countries. As a result, they are more likely to export general foreign workers and low-skilled labourers. As discussed before, Russia sets labour quotas based on the number of required labourers each year, and severely cracks down on illegal immigration, while Central Asian countries emphasise the importance of labour migration in Russia, and the reasons for illegal migration are various, including the reasons inside Russia. Russian public opinion has led to stricter immigration policies on Central Asia, so labour quotas have been reduced, but the administrative labour quotas are inconsistent with the actual labour market demand and are far less than the scale of labour export of Central Asian countries. Moreover, problems arise in implementing Russian immigration policies. The corruption of law enforcement personnel has led to many illegal immigrants from Central Asia flowing into Russia or staying in Russia illegally, and the rights of these immigrants are not guaranteed. Hence, Central Asian countries hope that Russia expands labour quotas, implements a loose policy for Central Asian immigrants, and legalises illegal immigrants. This is an important contradiction between the two sides and one of the factors affecting international cooperation.

Second, the problems that require resolution are different. For the destination country, the problems that need to be resolved revolve around the negative impact of illegal migration, including:

- the negative impact on the labour market—for example, the increase in illegal migrants affects the employment of domestic workers;
- the negative impact on the normal economic order—to elude police officers, there will be a demand for illegal trade such as fake identity documents and underground leases, resulting in corresponding illegal economic industries;
- the negative impact on social stability—because of their illegal status, some illegal migrants have difficulty finding jobs and therefore are prone to commit crimes such as prostitution, theft, robbery, and murder;

- the negative impact on public health—illegal migrants who enter through illegal channels may bring infectious diseases, thereby causing immeasurable harm to the destination country;
- the negative impact on the population—illegal migration leads to disordered population growth in the destination country and competes with residents for production and living resources.

However, for the source country, these are not their primary considerations. What concerns them most are their national rights and interests and foreign exchange income. Although the source country does not want to see the adverse effects on the destination country, they cannot accept the destination country's policy of severely cracking down on and repatriating illegal migrants.

Third, the governance of illegal migration involves the interests of different countries. If the two sides cannot reach a consensus through communication and negotiation, international cooperation will be difficult and cooperative governance will not be achieved. Taking the repatriation of illegal migrants in Yunnan Province as an example. The Chinese Government wants to repatriate illegal migrants from Vietnam, Laos, and Myanmar in the southwest border area. This requires international cooperation regarding the governance of illegal migration. However, for different interests, it is difficult to reach an agreement on the issue of repatriation. For instance, in bilateral negotiations, Vietnam proposed that illegal migrants who have been staying in China for a long time should be treated differently in a humanitarian spirit. For those who have already established a family, China should look to legalising their marriage and residence, and until then their status should be maintained.⁷⁷⁹ Although China has not yet responded to the Vietnamese proposal, the effectiveness of the cooperation between the two countries can be imagined on the premise that Vietnam would not support repatriation. Therefore, to improve international cooperation, the interests of both parties should be considered, and efforts should be made for mutually beneficial, win-win solutions.

3 Content

To improve its effectiveness, international cooperation should focus on content that accords with the interests of all parties. Learning from Russia's experience, Russia conducts multilateral cooperation among member states to prevent and control illegal migration. There

⁷⁷⁹ 罗刚 [Luo Gang] (n29) 220.

are both sending countries and receiving countries, and their interests on the issue of illegal migration are different. Thus, the focus of multilateral migration cooperation is not to crack down on illegal migration flows among member states but to strengthen legal labour migration cooperation and protect the rights and interests of labour migrants. The anti-illegal migration plan they have developed and implemented only targets illegal migrants from third-party countries other than member states. It can be seen that only when countries conform to the interests of all parties is it possible to reach an agreement to cooperate; otherwise, cooperative governance is empty talk.

Russia's policy to prevent and control illegal immigration is also shown in its regulation of the immigration management system and the labour migration market and its crackdown on illegal immigration, while the policies of the main sending countries (Tajikistan, Kyrgyzstan, and Uzbekistan) are manifested in promoting domestic employment, improving the professional skills of potential labour migrants, and assisting labour migrants to emigrate per legal and standardised procedures. Therefore, the bilateral cooperation between Russia and these countries to improve the professional skills of potential migrants is effective. The two sides cooperate because it is in the interests of all parties. For example, Russia and Kyrgyzstan jointly study the establishment of a set of organisational mechanisms for coordinating labour migration and employment, developing technical education, and promoting regulated and orderly labour exchanges, such as Russia's assistance to Kyrgyzstan in developing vocational technology and secondary education, and conducting professional training for people in Kyrgyzstan who are willing to work in Russia.

Thus, international cooperation should be based on the interests of all parties, and each party should understand what they want to achieve through cooperation. Under this premise, all countries conduct purposeful cooperation on certain content. For example, on the issue of repatriation, the Chinese government may conduct one-to-one consultations and negotiations with the governments of relevant countries to form a normative workflow and coordination mechanism and to stipulate the working procedures, time-limit requirements as well as repatriation methods, improve the legal effect of the repatriation agreement, and avoid randomness during the repatriation process by signing an intergovernmental cooperation agreement. All of this would ensure the smooth progress of illegal migration repatriation.

1 International Organisations

The lack of systematic strategic planning by international organisations has led to an inadequacy in the management of illegal migration in terms of coherence and comprehensiveness. First, international organisations face many difficulties in solving specific problems. For example, in the European migrant crisis in 2015, although the UN Refugee Agency and the IOM intervened, they faced problems of insufficient human and material resources, making it difficult to implement humanitarian assistance effectively.⁷⁸⁰ As of 2016, only 13,546 refugees were resettled, accounting for less than 10 per cent of the 160,000 refugees waiting to be resettled in Italy and Greece.⁷⁸¹ Due to the lack of intensive investment and legal channels for resettlement of refugees by international organisations and receiving countries, many refugees seek illegal channels.

Second, in the global governance of illegal migration, various actors—sovereign states, international organisations, and regional organisations deal with the issue separately and lack effective coordination and cooperation mechanisms. This is due to the lack of macro strategic thinking. Governance of illegal migration should not be limited to the policies of sovereign states, but focus on global development, starting from the reasons of illegal migration, promoting the legal flow of global migrants, reducing illegal flows, and defending the national interests of sovereign states. To achieve this goal, international organisations need to make efforts to promote the governance of illegal migration systematically. Specifically, international organisations may:

- formulate a macro, systematic, and comprehensive strategic plan for the management of illegal migration, promote the implementation of legal foreign labour projects in sovereign countries, and promote the orderly and legal flow of global migrants;
- improve the construction of governance mechanisms and coordinate the responsibilities and obligations of sovereign states;
- promote more effective cooperation between sovereign countries and regions.

Moreover, international organisations need to:

⁷⁸⁰ 唐慧云 [Tang Huiyun], 《全球非法移民治理困境及未来研究》 [‘Global Governance Dilemma of Illegal Immigration and the Research on Its Future’] (2017) 2 国际关系研究 *Journal of International Relations* 113–26.

⁷⁸¹ Ibid.

- strengthen data collection and policy research;
- promote technical assistance and training;
- coordinate the investment on international migration governance by the international community;
- strengthen coordination and cooperation of migration governance in various countries;
- improve international cooperation between sending and receiving countries and reduce channels of illegal migration; and
- achieve coherence and comprehensiveness in international migration governance.

Third, the main dilemma for the governance of illegal migration is fragmentation—that is, the coordination and cooperation of various actors of global governance: sovereign states, international organisations, and social groups. As far as the current global governance field is concerned, global economic governance and climate cooperation have achieved positive results, but illegal migration governance is still in the exploration stage of the problem-response model, and the related mechanism construction is also insufficient. The main reason for this situation is that the problem of illegal migration is more complicated than economic governance and climate cooperation. It is closely linked to national security and intertwined with terrorism and economic interests, so the characteristic of fragmentation is more obvious. To resolve this problem, international organisations may learn from the experience of global economic governance and climate cooperation by constructing appropriate mechanisms and promoting sustainable resolutions.

On the other hand, although international organisations have deficiencies and their role in practical governance is limited, their impact will increase with the development of society and the improvement of citizenship quality. They will come to represent the trend of the reform to a certain extent, so they become indispensable in illegal migration governance. For China to solve the problem of illegal immigration, it can purposefully seek the cooperation of international organisations. For example, one of the responsibilities of the IOM Liaison Office in China is to ensure the orderly movement migrants to China. Therefore, the Chinese government may play the role of IOM Liaison Office by cooperating in areas such as making brochures to popularise migration knowledge and assisting illegal immigrants to return to their home countries voluntarily, which will reduce the pressure on the Chinese government.

2 Integration

Social integration is a dynamic process by which immigrants interact with residents to build cultural acceptance, behavioural adaptation, and cultural identity.⁷⁸² The core elements of integration are:

- immigrants show respect for fundamental values in a democratic society;
- an immigrant has the right to maintain his or her own identity;
- immigrants have rights comparable to those of residents and corresponding obligations; and
- immigrants can participate in all aspects of life on an equal footing.⁷⁸³

Therefore, social integration focuses on the degree of individual participation in a group, the degree of identity recognition, and the degree of interdependence among group members, and pays attention to integrating immigrants into local society in an all-round manner, rather than as a special group.

Social integration can be further divided into social adaptation and social incorporation. Social adaptation emphasises the subjective initiative of immigrants—that is, immigrants participate in the process of local social life and integrate into local social relations. To achieve social adaptation, immigrants should first adapt to the new social environment in terms of behavioural habits and thinking habits and then obtain identity recognition psychologically.⁷⁸⁴ Social adaptation depends more on the immigrant's own mobility and psychological cognition, highlighting the subjective nature of immigrants.

Social incorporation emphasises the structural characteristics of social integration and describes the process in which immigrants establish their lives in the receiving country in terms of a policy framework, labour market, social space, and the role of social networks.⁷⁸⁵ It emphasises the role of the government and public institutions, pointing out that integration into

⁷⁸² 姚尚建 [Yao Shangjian] and 晏晓娟 [Yan Xiaojuan], 《社会融入与治理发展：一个移民理论比较的视角》 [‘Social Integration and Governance Development: A Comparative Perspective of Immigration Theory’] (2019) 40(5) 东岳论丛 *Dong Yue Tribune* 176–82.

⁷⁸³ Han Entzinger and Renske Biezeveld, ‘Benchmarking in Immigrant Integration’ (Research Report, European Commission, 2003).

⁷⁸⁴ David Mutton and C Emdad Haque, ‘Human Vulnerability, Dislocation and Resettlement: Adaptation Processes of River-Bank Erosion-Induced Displacees in Bangladesh’ (2004) 28(1) *Disasters* 41–62.

⁷⁸⁵ Panos Hatziprokopiou, ‘Albanian Immigrants in Thessaloniki, Greece: Processes of Economic and Social Incorporation’ (2003) 29(6) *Journal of Ethnic and Migration Studies* 1033–57.

the new society requires not only the immigrant group's knowledge and choice of the new society but also the public policy of the government and society and the impact of social management on immigrants. It also aims to improve economic competitiveness, cultural adaptability, and familiarity with the political and social environment of immigrants through the government providing comprehensive education, skill training, and related social welfare policies.

It should be recognised that the Chinese government has introduced some measures to facilitate immigrants, such as the 12 measures for foreigners to enter and exit China.⁷⁸⁶ However, there is room for improvement in promoting the integration of immigrants into Chinese society. For example, the Chinese government may work with international organisations to develop multilingual brochures to popularise basic Chinese legal and cultural knowledge, as well as provide language training for immigrants through investment in public institutions.

Social integration is not only related to legal immigrants. Some illegal immigrants also require social integration. Some illegal immigrants have lived in China for many years. They have fully mastered the local language and adapted to local customs, and local people have completely accepted them. Some of these people have already established family with Chinese citizens while others have not; however, they all think they are Chinese.⁷⁸⁷ For this group of illegal immigrants, the Chinese government may uphold the idea of differentiated treatment and classified governance—that is, divide illegal immigrants into two categories for different treatment. For instance, for illegal immigrants staying in China for a long time, especially those who have established family, the Chinese government may consider legalisation through certain methods. For illegal immigrants who work in short-term jobs, it is necessary to respect the spirit of bilateral cooperation between the two governments and strictly implement the repatriation measure.

3 The Enhancement of Public Awareness

Implementation of the regulatory framework described so far is of less value and effect if there is a lack of public awareness of illegal economic immigration in China. To date, there has been

⁷⁸⁶ 中华人民共和国公安部 [The Ministry of Public Security of the People's Republic of China], 《国家移民管理局在全国范围内推广复制促进服务自贸区建设 12 条移民与出入境便利政策》 [‘The National Immigration Administration Promotes 12 Immigration and Entry-and-Exit Convenient Policies Nationwide’] (Web Page, 17 July 2019) <<https://www.mps.gov.cn/n6557558/c6613913/content.html>>.

⁷⁸⁷ 罗刚 [Luo Gang] (n29) 168.

little public education on illegal immigration. For the reform to take effect, it is necessary to raise public awareness.

Public education can be achieved by:

- publication and distribution of brochures on immigration and illegal immigration in Chinese and other ethnic dialects;
- increase of university-based training related to immigration;
- use of mass media to broadcast special programs to convey information about illegal immigration matters.

The major obstacle in implementing public education programs is the structurally inadequate, poorly funded Chinese institutions, whose purpose is to fulfil those obligations. Rectifying this requires a concerted and coordinated effort over time. This would heighten public responsiveness to migration matters in daily living.

V CONCLUSION

This chapter has made recommendations in terms of policy and law about illegal economic immigration. In terms of policy, four factors need to be considered: the economy, politics, individual interests, and national interests. In terms of the law, it mainly involves legislation and enforcement. Before formulating legislation, necessity and feasibility need to be considered. When formulating specific legal provisions, stakeholder theory should be applied. The stakeholders in the field of immigration law should at least include Chinese industries, citizens, immigrants, and the country itself. Since China's industries and Chinese citizens represent China's interests, legislators tend to take them into account when making legislation, but immigrants are easily overlooked. Based on Singapore's experience, it should be noted that immigrants are one of the important stakeholders. Immigrants' interests are related to human rights issues and international relations, so legislators should consider them. When it comes to enforcement, an organisational model is needed comprising a legal system, an organisational system, a supervision system, and a guarantee system.

Learning from Russia's experience, China should pay attention to several factors when cooperating with source countries—that is, different standpoints between sending countries and receiving countries, different problems that require resolution, and different benefits through cooperation. Also, to improve effectiveness, China and the source country should cooperate on specific content, such as improving the professional skills of potential migrants.

Lastly, other recommendations are not unimportant. International organisations play an indispensable role in the governance of illegal economic immigration. Promoting the integration of immigrants may not only reduce conflicts between citizens and immigrants but also benefit international relations. Raising public awareness enables people to pay attention to the issue of illegal economic immigration, thereby promoting the effective implementation of the law.

CHAPTER SIX: SUMMARY AND CONCLUSION

Recent years have seen a growing number of illegal economic immigrants moving into China. While bringing some benefits to China, this influx has also caused harm, and the current regulatory framework is not enough to cope with it. Therefore, the core question of this study is how to improve the regulatory framework for illegal economic immigration. To answer this question, the study has adopted doctrinal analysis, interviews, and the comparative method to analyse the matter from the perspective of law and policy.

First, doctrinal analysis is the most basic research method. Through the analysis of current laws, regulations, and studies regarding illegal economic immigration, problems of policy and legislation can be found.

Second, to find out the current situation of illegal economic immigration in China and the difficulties in handling illegal economic immigration, 22 interviews were conducted in total: seven with police officers from public security departments, five with police officers from police stations, five with migration lawyers, and five with migration scholars. Through the interviews, problems with management departments and enforcement were found.

Third, illegal economic immigration is an international issue. Therefore, any study of it in China cannot be separated from an analysis of governance by the international community. The recommendations made to the Chinese government are based on the regulations of the international community, in particular Singapore and Russia, which are good models for China. Through doctrinal analysis and interviews, the problems with the current regulatory framework were discovered.

In terms of policy, China's current policy of introducing immigrants does not meet the national conditions and the labour market needs, neither does it take international relations into consideration.

To solve this problem, policymaking theory was chosen because it emphasises the balance of several factors, including the economy, politics, individual interests, and national interests.

In terms of legislation, China does not at present have a unified immigration law. The management of illegal immigration issues is scattered in different laws and regulations, leading to the following problems. First, there are no systematic laws and regulations. Because the relevant provisions are scattered in different laws, some provisions about the same issue are different or even conflict with one another. Second, some laws and regulations are lagging. For

instance, after the Entry-and-Exit Administration Law was promulgated, supporting subordinate laws or detailed implementation rules did not follow, except for the Regulation on the Entry and Exit of Foreigners. This situation has led to a lack of specific explanations of provisions. Third, there is a gap in the current legislation. The current legislation does not regulate some issues, causing either confusion among law enforcement officers when they deal with related problems, or unfair situations because different law enforcement officers are likely to take completely different measures for the same matter.

The root of the legislative problems is that legislators have not taken all stakeholders into consideration. Therefore, this thesis applied stakeholder theory to identify the stakeholders in immigration law. It identified that the stakeholders should at least include Chinese industries, Chinese citizens, the illegal immigrants and the country itself.

When it comes to management departments, first, in January 2019, the National Immigration Administration launched preparation work for the Immigration Service Centres, which were planned to be up and running in the first half of the year. However, so far Immigration Service Centres in many areas have not been established. Second, the selection criteria and job responsibilities of the staff have not been specified. Third, there is a lack of staff, funds, and detention spaces. Due to the steady increase in the number of illegal immigrants, both the National Immigration Administration and the public security departments are facing serious problems of insufficient staff, funds, and detention space. Fourth, there are problems with the skills and professional standards of the staff. Some personnel even lack a sense of responsibility.

Concerning the problems that law enforcement officers need to face in practice, first, the National Immigration Administration has not set up specific and clear tasks and objectives that accurately reflect the intentions of law and policy. Second, public security bureaus have not assigned tasks and outcome standards to subordinate units. Third, there is no supervision system, which makes the discretion of grassroots managers too great. Fourth, the absence of a guarantee system has caused some staff to be irresponsible. As well as the problems caused by the organisational structure, there are also problems in terms of public awareness, infrastructure, repatriation, and integration.

The interviews confirmed that there is no organisational model that includes a legal system, an organisational system, a supervision system, and a guarantee system.

Recommendations are made aimed at the above problems in terms of policy, legislation, and enforcement. China can also draw lessons from Singapore and Russia. Singapore mainly

inspires China in terms of stakeholders. It can teach China that legislators need to balance the interests of all parties and that immigrants are important stakeholders. When formulating immigration law, Chinese legislators tend to consider the interests of Chinese industries and citizens, while the interests of immigrants too often are overlooked. The interests of immigrants are related to human rights and international relations, so they should be taken into consideration. At the same time as regulating illegal migration, the legislators need to stand in the shoes of illegal migrants to consider a more effective way of allowing legal migrants in—one that will reduce the number of illegal migrants and avoid the risks inherent in conducting illegal migration activities. They need to take more feasible measures to assist illegal migrants who are in need and improve the comprehensiveness and coherence of law to integrate immigrants into local communities.

Russia has had many successful experiences in terms of international cooperation. In learning from Russia's experience, China should pay attention to the following points. First, there may be contradictions between sending countries and the receiving country regarding the types of supply and demand for labour migrants. Second, the problems are different for sending countries and the receiving country. Third, sending and receiving countries receive different benefits from migration cooperation. In addition, international cooperation may purposefully focus on certain content in the interests of all parties. Before cooperating with the sending countries, China should learn about what problems that the sending country needs to resolve and what benefits that the sending country wants to obtain. The content of cooperation should be in line with the interests of both sides. In this way, cooperation is more likely to achieve the best result.

Finally, this study gives recommendations about policy, legislation, and enforcement. To improve policies, several factors need to be considered, including politics, the economy, individual interests, and national interests. That is to say, the policy should be in line with the market needs, satisfy individual and national interests, and take international relations into consideration.

In terms of legislation, first, it is necessary and feasible to regulate illegal economic immigration in China on a policy, legal, and theoretical basis. Second, when formulating specific legal provisions, the interests of all stakeholders need to be considered. It should be noted that the interests of illegal economic immigrants are likely to be forgotten. However, they are important stakeholders, so attention should be paid to protecting their rights.

In terms of enforcement, an organisational model is needed. To build an organisational model, first, the National Immigration Administration should set up specific tasks and objectives that accurately reflect policy intentions (legal system); second, it should draw up a plan to assign tasks to subordinate units (organisational system); third, it can adopt objective means to evaluate the performance of subordinate units (supervision system); and fourth, it may have management and control systems and social sanctions that ensure the subordinate units can take responsibility for their tasks (guarantee system). Furthermore, the role of international organisations should be fully played, social integration should be enhanced, and public awareness should be raised.

In conclusion, this thesis is a preliminary discussion on the issue of illegal economic immigration in China. It is hoped that this research will draw more people's attention to this issue and lay the foundation for in-depth research in the future. The study also has some limitations. First, the refugee problem was discovered through the interviews, but it is not within the scope of this thesis. Second, the study did not interview personnel from the National Immigration Administration. Third, the study has not provided specific recommendations for international organisations. Therefore, future research may consider these areas.

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APPENDIX A: INTERVIEW QUESTIONS (IN ENGLISH)

Interview questions for public security bureau staff

1. Approximately, how many illegal immigrants are there in mainland China?
 - A. There are about () illegal immigrants in mainland China.
 - B. I don't know.
 - C. I know, but I can't say.
2. As far as you know, are there illegal immigrants in the city where you are working?
 - A. Yes, there are illegal immigrants in the city where I am working.
 - B. No, there are no illegal immigrants in the city where I am working.
 - C. I don't know.
 - D. I know, but I can't say.
3. Approximately, how many illegal immigrants are there in the city where you are working?
 - A. There are about () illegal immigrants.
 - B. I don't know.
 - C. I know, but I can't say.
4. Where do illegal immigrants come from?
5. What types of illegal immigrants are in your city?
 - A. Illegal entry
 - B. Legal entry, illegal overstay
 - C. Legal entry, legal stay, and illegal employment.
6. How do illegal immigrants enter into China?
 - A. Holding border citizen documents
 - B. Going through small, convenient paths between two countries
 - C. Holding passports and visas
 - D. Other ways (please specify)
 - E. I don't know.
7. Why do these illegal immigrants come to China?
 - A. Economic purpose
 - B. Marriage purpose
 - C. Both
 - D. Other purposes (please specify).
8. What kinds of occupation do illegal immigrants have?
 - A. Doing business
 - B. Working in labour-intensive factories
 - C. Working in foreign-funded enterprises
 - D. Engaging in illegal activities such as prostitution, drug trafficking, or smuggling.
 - E. Others (please specify).
9. What benefits do you think illegal immigrants have brought to China?
 - A. Promote the development of a market economy
 - B. Provide cheap labour force

- C. Provide a source of potential spouses
 - D. Other benefits (please specify)
 - E. Legal immigrants do bring the above benefits while illegal immigrants don't.
10. What negative impacts do you think illegal immigrants have brought to China?
 - A. Hinder the development of a market economy
 - B. Affect social stability
 - C. Bring infectious diseases
 - D. Illegal activities such as prostitution, drug trafficking, or smuggling
 - E. Reduce employment opportunities
 - F. Conflicts with local people due to cultural differences
 - G. Other negative impacts (please specify)
 - H. There is no negative impact as long as the regulation is strengthened.
 11. What is the immigration policy in China?
 12. Do you think China's current immigration policy is effective? If not, how do you think it should be improved?
 13. What is the current basis for immigration regulation?
 - A. Relevant national law and regulation
 - B. Relevant law and regulation in each province and city
 - C. Relevant law and regulation in each ethnic autonomous region
 - D. International treaties (including multilateral and bilateral treaties)
 - E. Non-governmental agreements.
 14. Do you think the relevant law and regulation are effective? If not, how do you think they should be improved?
 15. What are the entities which manage illegal immigration?
 16. Do you think these management departments are effective? If not, how do you think they should be improved?
 17. In March 2018, China established the State Administration for Immigration. As far as you know, what measures has the State Administration for Immigration taken to regulate illegal immigration?
 - A. Taken a number of measures (please specify)
 - B. Have not taken any measures yet
 - C. I don't know.
 18. What impacts does the State Administration for Immigration have on the regulation of illegal immigration?
 19. What is the relationship between the State Administration for Immigration and the department in which you are working?
 20. What is your expectation of the State Administration for Immigration about the regulation of illegal immigration?

21. What methods does the Chinese government use to find illegal entry immigrants?
22. Is it possible that there are illegal entry immigrants who were not found when they entered?
23. If so, why weren't they found when they entered? How do you think it should be resolved?
24. What methods does the Chinese government use to find illegal residence immigrants?
25. Is it possible that there are illegal residence immigrants who have not been found?
26. If so, why can't they be found? How do you think it should be resolved?
27. What methods does the Chinese government use to find illegally employed immigrants?
28. Is it possible that there are illegally employed immigrants who have not been found?
29. If so, why can't they be found? How do you think it should be resolved?
30. What does your department do when illegal entry immigrants are found? Why?
31. What does your department do when illegal residence immigrants are found? Why?
32. How do you treat their children? Why?
33. What will happen to a lessor who rents out his/her property to illegal immigrants? Why?
34. What does your department do when illegally employed immigrants are found? Why?
35. How do you treat their children? Why?
36. What will happen to an employer who employs illegal immigrants? Why?
37. Do you think the way that your department treats illegal immigrants, their children, the lessors, and the employers is effective? If not, how do you think it should be improved?
38. What do you think are the difficulties or problems about the regulation of illegal immigration?
39. Do you have any suggestions regarding the regulation of illegal immigration?

Interview questions for police station staff

1. As far as you know, are there illegal immigrants found in your jurisdiction?
 - A. Yes, there are illegal immigrants found in my jurisdiction.
 - B. No, there are no illegal immigrants found in my jurisdiction.
 - C. I don't know.
 - D. I know, but I can't say.
2. Approximately, how many illegal immigrants are found in your jurisdiction?
 - A. There are about () illegal immigrants found in my jurisdiction.
 - B. I don't know.

- C. I know, but I can't say.
3. One of the duties of the police station is to manage the actual population in the jurisdiction, including permanent residents, temporary residents, and overseas residents. How do you manage the overseas residents living in the jurisdiction?
 4. Does your department register information about foreigners living in your jurisdiction? If so, what information is registered? If not, why not?
 5. Does your department check foreigners' documents? If so, what measures are taken to identify the authenticity of the documents? If not, why not?
 6. Is it possible that there are foreigners living in your jurisdiction without registration? Why?
 7. If so, how do you think should this situation be prevented?
 8. Does the police station take actions to find illegal immigrants? If so, what actions are taken? Do you think these actions are effective? If not, how should they be improved?
 9. If the police station does not take any actions to find illegal immigrants, why? Do you think that actions should be taken to find illegal immigrants? Why? What actions do you think should be taken to find illegal immigrants?
 10. What does the police station do when illegal immigrants are found?
 11. How do you treat their children? Why?
 12. What will happen to a lessor who rents out his/her property to illegal immigrants? Why?
 13. What will happen to an employer who offers jobs to illegal immigrants? Why?
 14. Do you think the way that your department treats illegal immigrants, their children, the lessors, and the employers is effective? If not, how do you think it should be improved?
 15. What do you think are the difficulties or problems about the regulation of illegal immigration?
 16. Do you have any suggestions regarding the regulation of illegal immigration?

Interview questions for migration lawyers

1. Approximately, how many illegal immigrants are there in mainland China?
 - A. There are about () illegal immigrants in mainland China.
 - B. I don't know.
 - C. I know, but I can't say.
2. Where do illegal immigrants come from?
3. What types of illegal immigrants are there?
 - A. Illegal entry
 - B. Legal entry, illegal overstay
 - C. Legal entry, legal stay, and illegal employment.

4. How do illegal immigrants enter China?
 - A. Holding border citizen documents
 - B. Going through small, convenient paths between two countries
 - C. Holding passports and visas
 - D. Other ways (please specify)
 - E. I don't know.
5. Why do illegal immigrants come to China?
 - A. Economic purpose
 - B. Marriage purpose
 - C. Both
 - D. Other purposes (please specify).
6. What kinds of occupation do illegal immigrants have?
 - A. Doing business
 - B. Working in labour-intensive factories
 - C. Working in foreign-funded enterprises
 - D. Engaging in illegal activities such as prostitution, drug trafficking, or smuggling
 - E. Others (please specify).
7. What benefits do you think illegal immigrants have brought to China?
 - A. Promote the development of a market economy
 - B. Provide cheap labour force
 - C. Provide a source of potential spouses
 - D. Other benefits (please specify)
 - E. Legal immigrants do bring the above benefits while illegal immigrants don't.
8. What negative impacts do you think illegal immigrants have brought to China?
 - A. Hinder the development of a market economy
 - B. Affect social stability
 - C. Bring infectious diseases
 - D. Illegal activities such as prostitution, drug trafficking, or smuggling
 - E. Reduce employment opportunities
 - F. Conflicts with local people due to cultural differences
 - G. Other negative impacts (please specify)
 - H. There is no negative impact as long as the regulation is strengthened.
9. Have any foreigners consulted you how to immigrate to China? If so, what are the main questions for the consultation?
10. What are the ways to become a legal immigrant in China?
11. What are the obstacles to immigrating legally to China?
12. What is the immigration policy in China?
13. Do you think China's current immigration policy is effective? If not, how do you think it should be improved?

14. What is the current basis for immigration regulation?
 - A. Relevant national law and regulation
 - B. Relevant law and regulation in each province and city
 - C. Relevant law and regulation in each ethnic autonomous region
 - D. International treaties (including multilateral and bilateral treaties)
 - E. Non-government agreements.
15. Do you think the relevant law and regulation are effective? If not, how do you think they should be improved?
16. What are the entities that manage illegal immigration?
17. Do you think these management departments are effective? If not, how do you think they should be improved?
18. In March 2018, China established the State Administration for Immigration. As far as you know, what measures has the State Administration for Immigration taken to regulate illegal immigration?
 - A. Taken a number of measures (please specify)
 - B. Have not taken any measures yet
 - C. I don't know.
19. What impacts does the State Administration for Immigration have on the regulation of illegal immigration?
20. What is your expectation of the State Administration for Immigration about the regulation of illegal immigration?
21. What methods do the Chinese government use to find illegal immigrants?
22. Do you think these methods are effective? If not, how do you think they should be improved?
23. What does the Chinese government do when illegal immigrants are found? Why?
24. How do they treat the children of illegal immigrants? Why?
25. What will happen to a lessor who rents out his/her property to illegal immigrants? Why?
26. What will happen to an employer who employs illegal immigrants? Why?
27. Do you think the way that the Chinese government treats illegal immigrants, their children, the lessors, and the employers is effective? If not, how do you think it should be improved?
28. What do you think are the difficulties or problems about the regulation of illegal immigration?
29. Do you have any suggestions regarding the regulation of illegal immigration?

Interview questions for migration law scholars

1. Approximately, how many illegal immigrants are there in mainland China?
 - A. There are about () illegal immigrants in mainland China.

- B. I don't know.
 - C. I know, but I can't say.
2. Where do illegal immigrants come from?
 3. What types of illegal immigrants are there?
 - A. Illegal entry
 - B. Legal entry, illegal overstay
 - C. Legal entry, legal stay, and illegal employment.
 4. How do illegal immigrants enter into China?
 - A. Holding border citizen documents
 - B. Going through small, convenient paths between two countries
 - C. Holding passports and visas
 - D. Other ways (please specify)
 - E. I don't know.
 5. Why do illegal immigrants come to China?
 - A. Economic purpose
 - B. Marriage purpose
 - C. Both.
 - D. Other purposes (please specify).
 6. What kinds of occupation do illegal immigrants have?
 - A. Doing business
 - B. Working in labour-intensive factories
 - C. Working in foreign-funded enterprises
 - D. Illegal activities such as prostitution, drug trafficking, or smuggling
 - E. Others (please specify).
 7. What benefits do you think illegal immigrants have brought to China?
 - A. Promote the development of a market economy
 - B. Provide cheap labour force
 - C. Provide a source of potential spouses
 - D. Other benefits (please specify)
 - E. Legal immigrants do bring the above benefits while illegal immigrants don't.
 8. What negative impacts do you think illegal immigrants have brought to China?
 - A. Hinder the development of a market economy
 - B. Affect social stability
 - C. Bring infectious diseases
 - D. Illegal activities such as prostitution, drug trafficking, or smuggling
 - E. Reduce employment opportunities
 - F. Conflicts with local people due to cultural differences
 - G. Other negative impacts (please specify)
 - H. There is no negative impact as long as the regulation is strengthened.
 9. What is the immigration policy in China?
 10. Do you think China's current immigration policy is effective? If not, how do you think it should be improved?

11. What is the current basis for immigration regulation?
 - A. Relevant national law and regulation
 - B. Relevant law and regulation in each province and city
 - C. Relevant law and regulation in each ethnic autonomous region
 - D. International treaties (including multilateral and bilateral treaties)
 - E. Non-government agreements.
12. Do you think the relevant law and regulation are effective? If not, how do you think they should be improved?
13. What are the entities that manage illegal immigration?
14. Do you think these management departments are effective? If not, how do you think they should be improved?
15. What methods does the Chinese government use to find illegal immigrants?
16. Do you think these methods are effective? If not, how do you think they should be improved?
17. What does the Chinese government do when illegal immigrants are found? Why?
18. How do they treat the children of illegal immigrants? Why?
19. What will happen to a lessor who rents out his/her property to illegal immigrants? Why?
20. What will happen to an employer who employs illegal immigrants? Why?
21. Do you think the way that the Chinese government treats illegal immigrants, their children, the lessors, and the employers is effective? If not, how do you think it should be improved?
22. What do you think are the difficulties or problems about the regulation of illegal immigration?
23. Do you have any suggestions regarding the regulation of illegal immigration?

APPENDIX B: INTERVIEW QUESTIONS (IN CHINESE)

针对公安部门的问卷

1. 中国大陆大约有多少非法移民？
 - A. 大约有（ ）人。
 - B. 不了解。
 - C. 不能说。
2. 据您所知，您工作的地区是否有非法移民？
 - A. 有。
 - B. 没有。
 - C. 不了解。
 - D. 不能说。
3. 您所在的地区大约有多少非法移民？
 - A. 大约有（ ）人。
 - B. 不了解。
 - C. 不能说。
4. 这些非法移民来自哪里？
5. 这些非法移民属于什么类型？
 - A. 非法入境。
 - B. 合法入境，非法滞留。
 - C. 合法入境，合法居留，非法就业。
6. 这些非法移民通过什么方法入境？
 - A. 持边民证入境。
 - B. 通过乡间小路，便道入境。
 - C. 持护照和签证入境。
 - D. 用其他方式入境（请具体说明）。
 - E. 不了解。
7. 这些非法移民来中国的目的？
 - A. 赚钱。
 - B. 结婚。
 - C. 两者皆有。
 - D. 其他（请具体说明）。
8. 这些非法移民从事什么职业？
 - A. 做生意。
 - B. 在劳动力密集型的工厂打工。
 - C. 在外资企业工作。
 - D. 从事卖淫，贩毒，走私等违法犯罪活动。
 - E. 其他职业（请具体说明）。
9. 您认为这些非法移民给中国带来的好处有哪些？
 - A. 促进市场经济发展。
 - B. 提供廉价劳动力。
 - C. 提供配偶资源。
 - D. 其他好处（请具体说明）。

- E. 合法移民才有前面说的好处，非法移民没有什么好处。
10. 您认为这些非法移民给中国带来的坏处有哪些？
- A. 阻碍市场经济发展。
 - B. 影响社会稳定。
 - C. 带来传染病。
 - D. 滋生卖淫，贩毒，走私等违法犯罪活动。
 - E. 减少当地人就业机会。
 - F. 由于文化差异导致与当地人的冲突。
 - G. 其他坏处（请具体说明）。
 - H. 只要加强管理，没有多少坏处。
11. 我国目前的移民政策是什么？
12. 您认为我国目前的移民政策完善吗？如果不完善，您认为应当如何改进？
13. 我国目前管理移民的依据有哪些？
- A. 国家相关的法律，法规。
 - B. 各省市相关的法律，法规。
 - C. 民族自治区法律，法规。
 - D. 国际条约（包括多边条约和双边条约）。
 - E. 乡规民约。
14. 您认为我国目前管理移民的法律，法规，及其他相关依据完善吗？如果不完善，应该如何改进？
15. 我国目前管理移民依靠哪些部门？
16. 您认为我国目前管理移民的部门完善吗？如果不完善，应该如何改进？
17. 2018 年 3 月，我国组建了国家移民管理局，据您所知，国家移民管理局对于非法移民的管理采取了哪些措施？
- A. 采取了一些措施（请具体说明）。
 - B. 未采取措施。
 - C. 不了解。
18. 国家移民管理局对于非法移民的管理起到什么作用？
19. 国家移民管理局与您所在部门的关系？
20. 您对于国家移民管理局今后对于非法移民的管理有哪些期待？
21. 我国目前采取什么方式发现非法入境的非法移民？
22. 采取目前的方式，是否有发现不了而实际存在的非法入境移民？
23. 如果有，为什么入境时没有发现？您认为应该如何解决？
24. 我国目前采取什么方式发现非法居留的非法移民？
25. 采取目前的方式，是否有发现不了而实际存在的非法居留移民？
26. 如果有，为什么发现不了？您认为应该如何解决？
27. 我国目前采取什么方式发现非法就业的非法移民？
28. 采取目前的方式，是否有发现不了而实际存在的非法就业移民？
29. 如果有，为什么发现不了？您认为应该如何解决？
30. 发现非法入境的非法移民后如何处理？依据是什么？
31. 发现非法居留的非法移民后如何处理？依据是什么？
32. 如何对待非法居留移民的子女？依据是什么？
33. 对于将房屋出租给非法移民的出租人，会如何处理？依据是什么？
34. 发现非法就业的非法移民后如何处理？依据是什么？
35. 如何对待非法就业移民的子女？依据是什么？

36. 对于给非法移民提供工作的雇主，会如何处理？依据是什么？
37. 您认为这些处理方式完善吗？如果不完善，应该如何改进？
38. 您认为对非法移民加强管理的困难或问题有哪些？
39. 关于非法移民的管理，您有什么建议吗？

针对派出所的问卷

1. 据您所知，您管理的辖区是否有过非法移民？
 - A. 有。
 - B. 没有。
 - C. 不了解。
 - D. 不能说。
2. 您管理的辖区大约有过多少非法移民？
 - A. 大约有（ ）人。
 - B. 不了解。
 - C. 不能说。
3. 派出所的其中一项职责是：管理辖区内的实有人口（包括常住人口、暂住人口和境外在本辖区居住人员），请问具体是如何管理境外在本辖区居住人员的？
4. 对于辖区内居住的外国人，是否登记信息？如果是，登记哪些信息？如果不是，为什么？
5. 是否会查验外国人证件的真伪？如果是，采取哪些措施辨别证件真伪？如果不是，为什么？
6. 是否存在不登记而实际居住的可能性？为什么？
7. 如果存在这种可能性，您认为应当如何预防这种情况？
8. 您所在单位是否采取一些措施发现非法移民？如果是，采取哪些措施？您认为这些措施完善吗？如果不完善，如何改进？
9. 如果不是，为什么？您认为应该采取措施发现非法移民吗？为什么？您认为应该采取哪些措施？
10. 发现非法移民后，您所在单位如何处理？依据是什么？
11. 如何对待非法移民的子女？依据是什么？
12. 对于将房屋出租给非法移民的出租人，会如何处理？依据是什么？
13. 对于给非法移民提供工作的雇主，会如何处理？依据是什么？
14. 您认为这些处理方式完善吗？如果不完善，应该如何改进？
15. 您认为对非法移民加强管理的困难或问题有哪些？
16. 关于非法移民的管理，您有什么建议吗？

针对移民律师的问卷

1. 中国大陆大约有多少非法移民？
 - A. 大约有（ ）非法移民。
 - B. 不了解。
 - C. 不能说。
2. 这些非法移民来自哪里？
3. 这些非法移民属于什么类型？
 - A. 非法入境。

- B. 合法入境，非法滞留。
 - C. 合法入境，合法居留，非法就业。
4. 这些非法移民通过什么方法入境？
- A. 持边民证入境。
 - B. 通过乡间小路，便道入境。
 - C. 持护照和签证入境。
 - D. 用其他方式入境（请具体说明）。
 - E. 不了解。
5. 这些非法移民来中国的目的？
- A. 赚钱。
 - B. 结婚。
 - C. 两者皆有。
 - D. 其他（请具体说明）。
6. 这些非法移民从事什么职业？
- A. 做生意。
 - B. 在劳动力密集型的工厂打工。
 - C. 在外资企业工作。
 - D. 从事卖淫，贩毒，走私等违法犯罪活动。
 - E. 其他职业（请具体说明）。
7. 您认为这些非法移民给中国带来的好处有哪些？
- A. 促进市场经济发展。
 - B. 提供廉价劳动力。
 - C. 提供配偶资源。
 - D. 其他好处（请具体说明）。
 - E. 合法移民才有前面说的好处，非法移民没有什么好处。
8. 您认为这些非法移民给中国带来的坏处有哪些？
- A. 阻碍市场经济发展。
 - B. 影响社会稳定。
 - C. 带来传染病。
 - D. 滋生卖淫，贩毒，走私等违法犯罪活动。
 - E. 减少当地人就业机会。
 - F. 由于文化差异导致与当地人的冲突。
 - G. 其他坏处（请具体说明）。
 - H. 只要加强管理，没有多少坏处。
9. 是否有外国人向您咨询过如何移民中国？如果有，咨询的主要问题是什么？
10. 成为我国合法移民的途径有哪些？
11. 合法移民中国的障碍是什么？
12. 我国目前的移民政策是什么？
13. 您认为我国目前的移民政策完善吗？如果不完善，您认为应当如何改进？
14. 我国目前管理移民的依据有哪些？
- A. 国家相关的法律，法规。
 - B. 各省市相关的法律，法规。
 - C. 民族自治区法律，法规。
 - D. 国际条约（包括多边条约和双边条约）。
 - E. 乡规民约。

15. 您认为我国目前管理移民的法律，法规，及其他相关依据完善吗？如果不完善，应该如何改进？
16. 我国目前管理移民依靠哪些部门？
17. 您认为我国目前管理移民的部门完善吗？如果不完善，应该如何改进？
18. 2018 年 3 月，我国组建了国家移民管理局，据您所知，国家移民管理局对于非法移民的管理采取了哪些措施？
 - A. 采取了一些措施（请具体说明）。
 - B. 未采取措施。
 - C. 不了解。
19. 国家移民管理局对于非法移民的管理起到什么作用？
20. 您对于国家移民管理局今后对于非法移民的管理有哪些期待？
21. 我国目前采取什么方式发现非法移民？
22. 这些方式完善吗？如果不完善，应该如何改进？
23. 发现非法移民后如何处理？依据是什么？
24. 如何对待非法移民的子女？依据是什么？
25. 对于将房屋出租给非法移民的出租人，如何处理？依据是什么？
26. 对于给非法移民提供工作的雇主，如何处理？依据是什么？
27. 您认为这些处理方式完善吗？如果不完善，应该如何改进？
28. 您认为对非法移民加强管理的困难或问题有哪些？
29. 关于非法移民的管理，您有什么建议吗？

针对学者的问卷

1. 中国大陆大约有多少非法移民？
 - A. 大约有（ ）非法移民。
 - B. 不了解。
 - C. 不能说。
2. 这些非法移民来自哪里？
3. 这些非法移民属于什么类型？
 - A. 非法入境。
 - B. 合法入境，非法滞留。
 - C. 合法入境，合法居留，非法就业。
4. 这些非法移民通过什么方法入境？
 - A. 持边民证入境。
 - B. 通过乡间小路，便道入境。
 - C. 持护照和签证入境。
 - D. 用其他方式入境（请具体说明）。
 - E. 不了解。
5. 这些非法移民来中国的目的？
 - A. 赚钱。
 - B. 结婚。
 - C. 两者皆有。
 - D. 其他（请具体说明）。
6. 这些非法移民从事的职业？
 - A. 做生意。

- B. 在劳动力密集型的工厂打工。
 - C. 在外资企业工作。
 - D. 从事卖淫，贩毒，走私等违法犯罪活动。
 - E. 其他职业（请具体说明）。
7. 您认为这些非法移民给中国带来的好处有哪些？
- A. 促进市场经济发展。
 - B. 提供廉价劳动力。
 - C. 提供配偶资源。
 - D. 其他好处（请具体说明）。
 - E. 合法移民才有前面说的好处，非法移民没有什么好处。
8. 您认为这些非法移民给中国带来的坏处有哪些？
- A. 阻碍市场经济发展。
 - B. 影响社会稳定。
 - C. 带来传染病。
 - D. 滋生卖淫，贩毒，走私等违法犯罪活动。
 - E. 减少当地人就业机会。
 - F. 由于文化差异导致与当地人的冲突。
 - G. 其他坏处（请具体说明）。
 - H. 只要加强管理，没有多少坏处。
9. 我国目前的移民政策是什么？
10. 您认为我国目前的移民政策完善吗？如果不完善，您认为应当如何改进？
11. 我国目前管理移民的依据有哪些？
- A. 国家相关的法律，法规。
 - B. 各省市相关的法律，法规。
 - C. 民族自治区法律，法规。
 - D. 国际条约（包括多边条约和双边条约）。
 - E. 乡规民约。
12. 您认为我国目前管理移民的法律，法规，及其他相关依据完善吗？如果不完善，应该如何改进？
13. 我国目前管理移民依靠哪些部门？
14. 您认为我国目前管理移民的部门完善吗？如果不完善，应该如何改进？
15. 我国目前采取什么方式发现非法移民？
16. 这些方式完善吗？如果不完善，应该如何改进？
17. 发现非法移民后如何处理？依据是什么？
18. 如何对待非法移民的子女？依据是什么？
19. 对于将房屋出租给非法移民的出租人，如何处理？依据是什么？
20. 对于给非法移民提供工作的雇主，如何处理？依据是什么？
21. 您认为这些处理方式完善吗？如果不完善，应该如何改进？
22. 您认为对非法移民加强管理的困难或问题有哪些？
23. 关于非法移民的管理，您有什么建议吗？